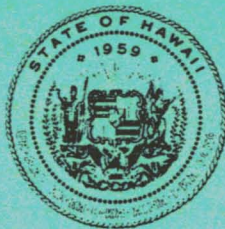


**Review Commission on the State Water Code
State of Hawaii**

**FINAL REPORT
TO THE HAWAII STATE LEGISLATURE**





% LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol
Honolulu, Hawaii 96813

December 28, 1994

Honorable Norman Mizuguchi
President of the Senate
State of Hawaii

Honorable Joseph M. Souki
Speaker, House of Representatives
State of Hawaii

Sirs:

Pursuant to section 5, Act 45, Session Laws of Hawaii 1987, the Review Commission on the State Water Code (hereinafter referred to as "commission") submits this final report on the work of the commission. This report contains the commission's findings and recommendations to improve the State Water Code.

The commission was established to perform a comprehensive review of the State Water Code five years following the passage of the Code and to develop recommendations for its improvement. A seven-member commission, appointed by joint letter by former Senate President Richard S. H. Wong and former Speaker of the House Daniel J. Kihano, held its first meeting on November 13, 1992. Pursuant to Act 101, Session Laws of Hawaii 1994, two additional members were appointed on June 29, 1994, by joint letter by the current Senate President and House Speaker.

The commission held fifty-two regular meetings, at many of which it received briefings by representatives of federal, state, and county agencies responsible for protecting, regulating, and managing the State's water resources. In addition, it held twelve public informational meetings and ten public hearings throughout the State. To gain a better understanding of Hawaiian water rights, the commission conducted a workshop on specific issues relating to the Implementation of Hawaiian Water Rights, which was followed up with a public hearing on the same issues.

The commission has received funding from the Legislature in the amounts of \$100,000 for FY 1992-1993, \$100,000 for FY 1993-1994, and \$155,000 for FY 1994-1995. Even though the commission will remain in existence for one year after the submittal of its final report, it will not request an appropriation for FY 1995-1996.

The commission's recommendations for improving the State Water Code are contained in the bill for an act relating to the State Water Code. The proposed amendments, if passed, will:

1. Extend the designation of water management areas to include the entire State;
2. Phase in a unified statewide permit system;
3. Strengthen the implementation of Native Hawaiian water rights;
4. Add a new part III, Hierarchy of Water Uses;
5. Add five components to part II, Hawaii Water Plan;
6. Reorganize part VI, Instream Uses of Water;
7. Reorganize and clarify sections relating to notice, hearing, standing, and judicial review; and
8. Reorganize the administrative structure of the commission on water resource management (CWRM).

The commission's recommendations are based on its review of (1) the work of the CWRM, (2) input from government agencies, (3) input from comments and testimony received at public informational meetings and public hearings, and (4) input via an external review of the commission's Final Draft of Proposed Amendments to Improve the State Water Code.

Consensus was reached on all of the proposed amendments, even though individual commissioners initially expressed reservations in varying degrees about several proposals. Very much on the minds of individual commissioners was the proper balance to be achieved by a Water Code that would: (1) establish priorities, (2) require the CWRM to adopt rules, and (3) provide the CWRM with discretionary authority in certain areas of decisionmaking. In the end, the commission decided that the CWRM could serve the public interest best by making decisions less on a case-by-case basis and more through rule-governed procedures supplemented by more comprehensive and better focused planning.

To ensure the protection of the State's water resources and to carry out the mandate of Article XI, Section 1, State Constitution, it is a finding of the commission that the CWRM needs increased resources, both additional funding and staffing levels.

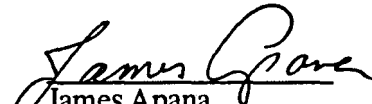
The Review Commission on the State Water Code recommends that the legislature review and study the bill for an act relating to the State Water Code and take appropriate action. Members of the commission stand ready to serve as resource persons should the legislature desire to be briefed on any aspect of the bill.

Respectfully,



Fred E. Trotter, Chair



Ray Sato, Vice Chair


Charlene Hoe, Secretary


James Apana


Bina Chun


Kazu Hayashida


Alan Inaba


Douglas MacDougal


Alan Murakami

**Review Commission on the State Water Code
State of Hawaii**

c/o Legislative Reference Bureau

**FINAL REPORT
TO THE HAWAII STATE LEGISLATURE**

December 28, 1994



TABLE OF CONTENTS

PART I: INTRODUCTION

1. Identification and definition of public and public rights to water	9
2. Institution of a comprehensive statewide permit system to regulate all types and uses of water	10
3. Integration of water quality and water quantity matters for a unified management of the resource by a single lead agency	13
4. The appropriate agencies of the state and county levels responsible for protecting, developing, and controlling water, their aims and objectives, the necessary powers to be conferred upon them, and their organizational support	14
5. Hawaiian water rights	15
6. Reuse of wastewater	16
7. User fees to supplement the resources of the Commission on Water Resource Management	16
8. Ten-year review	17
9. Standing, public notice, hearings, and judicial review	17
10. Effects of the proposed amendments on other state departments	17
11. Conclusion	18

PART II: COMMENTS ON THE PROPOSED AMENDMENTS TO HRS CHAPTER 174C, STATE WATER CODE

1. Part I, Administrative Structure	19
2. Part A, Hawaii Water Plan	22
3. Part B, Hierarchy of Water Uses	23
4. Part IV, Regulation of Water Use	27
5. Part V, Water Quality	29
6. Part C, Instream Uses of Water	29
7. Part VII, Wells	30
8. Part VIII, Stream Diversion Works	30
9. Part IX, Native Hawaiian Water Rights	30

PART III: PURPOSE, MEMBERSHIP, WORK PROGRAM, AND EXPENDITURES

1. Background and purpose	31
2. Members	31
3. Organization	32
4. Meetings	32
5. Public informational meetings	34
6. Public hearings	35
7. Publicity	36

8. Depositories	36
9. Studies	37
10. Identification of major issues	38
11. Workshop and public hearing on Hawaiian water rights	38
12. External review of final draft of proposed amendments to improve the State Water Code	39
13. Finances	40

APPENDICES

1. Appendix A, Section 5, Act 45, Session Laws of Hawaii 1987	43
2. Appendix B, Bill for an Act relating to the State Water Code	47
3. Appendix C, Meeting Schedule, 1992–1994	207
4. Appendix D, Acknowledgments	213

PART I: INTRODUCTION

Pursuant to Section 5, Act 45, Session Laws of Hawaii 1987, the Review Commission on the State Water Code performed a "comprehensive review of the State Water Code." (See Appendix A.) Its findings and recommendations are embodied in the bill for an act relating to the State Water Code. (See Appendix B.) The mandate to perform a comprehensive review also mandates a review of three specific issues, "other water matters of fundamental importance which should be dealt with in a state water code, but which have not yet been incorporated":

1. "The identification and definition of public and private rights to water,"
2. "The institution of a comprehensive statewide permit system to regulate all types and uses of water," and
3. "The integration of water quality and water quantity matters for a unified management of the resource by a single lead agency."

In addition, the legislative mandate called for a review of:

4. "The appropriate agencies of the state and county levels responsible for protecting, developing, and controlling water, their aims and objectives, the necessary powers to be conferred upon them, and their organizational support."

1. Identification and definition of public and private rights to water

The identification and definition of rights to water concentrated on the development of a hierarchy of water uses, which is set forth in Part B of the proposed amendments to the State Water Code. The Comments to the proposed amendments are meant to clarify the intent of the Review Commission.

The hierarchy of water uses is meant to incorporate and not enlarge rights found in the State Constitution, the Hawaiian Homes Commission Act of 1920, and current statutory law. Under the Review Commission's proposal, the Commission on Water Resource Management (CWRM) is given substantial authority to protect these rights by making several types of water reservations.

The constitutional amendment contained in Article XI, Section 7, requires the establishment of "criteria for water use priorities while assuring appurtenant rights and existing correlative and riparian uses." Even though only appurtenant rights are mentioned in the State Constitution, the Review Commission recognizes that other rights to water exist. These include: (1) the right of the Department of Hawaiian Home Lands (DHHL) to reserve sufficient quantities of stream and groundwater to carry out the federal mandate of the Hawaiian Homes Commission Act of 1920, (2) the rights of users of stream and ground waters who have assured uses under Article XI, Section 7, of the State Constitution, and (3) the right of the Department of Agriculture (DOA) to reserve sufficient quantities of stream water to ensure the productive cultivation of important agricultural lands and to promote diversified agriculture.

In an attempt to incorporate appurtenant rights and the other types of rights into a statewide water allocation system, the Review Commission has established a hierarchy of reserved uses of stream water and groundwater. The reserved uses are those uses that must be addressed before water is allocated to any other uses.

The appurtenant rights reserve is given a high position in the hierarchy because it is an early right, dating back to the middle of the last century. The right of the DHHL to reserve water dates back to the enactment of

the Hawaiian Homes Commission Act of 1920; more recently, the reservation right was clarified in Act 325, Session Laws of Hawaii 1991. The reserve for existing correlative and riparian uses dates back to the passage of the constitutional amendment in 1978. Justification for the agricultural reserve can be found in another 1978 constitutional amendment, Article XI, Section 3.

The quantities of water that are reserved are to be determined by the CWRM. The appurtenant rights reserve is for the amount of water sufficient for taro cultivation at the time the land was converted to private ownership in the middle of the last century. The Hawaiian home lands reserve is for the amount of water for the "current and foreseeable development and use needs" of the DHHL. The reserve for existing correlative and riparian uses is for the amounts that have been in use since November 7, 1978. The agricultural reserve is for amounts consistent with a certified agricultural water plan that is to be prepared by the DOA.

Superior to these reserved uses is the constitutional mandate contained in Article XI, Section 7, to protect the resource: "The State has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people." The CWRM also is required to "protect ground and surface water, watersheds and natural stream environments." The constitutional amendment contained in Article XII, Section 7, protects customary and traditional Hawaiian rights to gather from streams for subsistence purposes.

This right implies a duty to maintain adequate flows in streams to ensure the propagation of native species such as oopu, opae, and hihiwai.

The proposed hierarchy of water uses seeks to protect the resource by requiring that the needs of the conservation reserve be met before those of any other reserved or nonreserved use. The CWRM, however, is given discretionary authority in establishing the conservation reserve or in modifying it based on the availability of new data or on changing conditions.

All reservations will be made or modified by the CWRM by rule.

In addition to developing the proposed hierarchy of water uses, the Review Commission has proposed definitions to the following terms:

1. Appurtenant rights,
2. Riparian uses and existing riparian uses, and
3. Correlative uses and existing correlative uses.

2. Institution of a comprehensive statewide permit system to regulate all types and uses of water

In its deliberations on the advantages and disadvantages of a comprehensive statewide permit system, the Review Commission was mindful of several advantages and disadvantages to such a system:

Advantages:

1. It would eliminate the two sets of water laws under which water use currently is regulated in Hawaii: one for the areas designated water management areas, that is, most of Oahu and the island of Molokai, and another for nondesignated areas, the rest of the State. Currently, out of watershed transfers of water and reservations of water may occur only in designated water management areas.
2. It would do away with the designation process, which is cumbersome, costly, and time-consuming.
3. It would replace a crisis-management procedure, under which the State may designate an aquifer when 90 percent of that aquifer's sustainable yield is reached, with a procedure that will provide for the more timely establishment of permit requirements.

Disadvantages:

1. It could compromise the home rule authority of the counties.
2. It could create additional burdens for the staff of the CWRM, given recent levels of funding.

In developing a comprehensive statewide permit system, the Review Commission took care not to compromise the home rule authority of the counties and not to impose unreasonable extra burdens on the staff of the CWRM. Its proposal is for a comprehensive statewide permit system that would be phased in in accordance with a schedule to be worked out by the CWRM in cooperation with the counties. The phasing in process will result in the gradual designation of the entire State as a water management area. The Review Commission envisions the designation process being completed within ten years.

Upon the effective date of the amendment creating a statewide permit system, both the transfer of water from one watershed to another and the ability of the CWRM to reserve quantities of available water for certain purposes, now allowable only in designated water management areas, will become water management tools that may be implemented anywhere in the State.

Within 18 months of the effective date, the CWRM, in cooperation with the counties, will be required to adopt rules establishing:

1. The sequence and timing for phasing in the water use permit system,
2. The geographic areas and classes or types of water use that would require permits, and
3. Deadlines for filing applications for preexisting uses of water.

(Note: The geographic areas may include an entire island or certain hydrologic units of an island. Classes of use include municipal, military, agricultural, golf course, and industrial. Types of use include surface water, groundwater, and reclaimed wastewater. Permits also may be required for any activity that might destroy any portion of an aquifer or other water source or for any activity that might harm the biological, chemical, or physical integrity of a stream or spring.)

(Note: Preexisting uses of water are not the constitutionally protected existing correlative and riparian uses; instead, they are reasonable-beneficial uses already occurring when a geographic area or class or type of use is phased into the statewide water-permit system.)

The purpose of the rules is to allow the CWRM to manage the phasing in of the statewide permit system. The CWRM would expand the requirement for water use permits in an orderly way consistent with its available resources—staffing and funding levels. Increased funding in certain years would make it possible for the CWRM to hire additional staff or consultants to review water use permit applications. Instead of having to respond to petitions to designate certain areas of the State, the CWRM would be able to establish a schedule for phasing in the unregulated areas of the State. The rules also could allow the CWRM first to phase in critical areas of concern and areas where water disputes are occurring. In addition, the rules will schedule the phasing in of permits for surface water uses in previously designated groundwater management areas—that is, most of Oahu and the island of Molokai.

The home rule concern was addressed by allowing the CWRM to delegate some or all of its permitting authority to qualified county agencies. Permitting may occur at the county level provided certain conditions are met:

1. An appropriate county agency requests to be delegated permitting authority;
2. The county agency is not a purveyor or developer of water;
3. The county agency has the necessary staffing and technical expertise to make sound and timely decisions;

4. The CWRM retains oversight authority;
5. The CWRM may review any county agency decision on a permit application; and
6. The CWRM develops guidelines for exercising its power to rescind or modify the delegation of authority to county agencies.

Under the new statewide permit system the conditions that must be met to receive a water-use permit include:

1. Permits for new water uses. These are permits for water uses that occur after an area and class of use or type of use is phased into the statewide permit system.

Conditions:

- a. Is consistent with the hierarchy of water uses,
- b. Is a reasonable-beneficial use,
- c. Is consistent with the Hawaii water plan,
- d. Will not damage or waste the water resource, and
- e. Reasonably complies with appropriate water conservation practices.

2. Permits for preexisting water uses.

Conditions:

- a. Quantity of use is verified,
- b. Is a reasonable-beneficial use, and
- c. Is consistent with the hierarchy of water uses.

3. Permits for interim water uses. These are permits to allow a preexisting water use to continue long enough—but for no more than five years—so that the quantity of water used may be verified.

Conditions:

- a. Purpose is to verify the quantity of water used by an applicant for a preexisting use permit,
- b. Installation of water meters or gauges may be required to determine the quantity of water that was used for the preexisting use, and
- c. The use will not continue longer than five years.

Water use permits will be valid until a change in water use occurs. "Change in use" is defined as:

- "(1) change in location or place of use;
- (2) a change in class of water use such as domestic, municipal, military, agriculture, golf course, or industrial; or
- (3) an increase in the average annual amount of water being used beyond the amount specified by the commission in the water-use permit."

Water use permits may be reviewed by the CWRM at any time but at least not less than once every 20 years. Reviews will be conducted:

1. To determine whether the actual use is the authorized use,
2. To monitor the phasing-out of uses that do not conform to the hierarchy of water uses, or
3. To ensure reasonable compliance with appropriate water conservation practices.

Water use permits may be revoked for any of the following reasons:

1. A materially false statement in a permit application,
2. A material change of circumstances or conditions since the permit was issued,
3. A reckless, knowing, or intentional violation of a material provision of the State Water Code, or
4. Partial or total nonuse, for reasons other than conservation, of the water allowed by the permit for four or more continuous years.

Water use permits are not required for the following uses:

1. Use of a catchment system,
2. Domestic consumption of water by individual users, and
3. Reasonable-beneficial instream uses.

3. Integration of water quality and water quantity matters for a unified management of the resource by a single lead agency

Article XI, Section 7, of the State Constitution mandates the establishment of "a water resources agency" which, among other things, would "set overall water...quality...policies." Despite this requirement that a single agency be responsible for both quantity and quality matters, the State Water Code places responsibility for water quality matters in the Department of Health (DOH). Following its review of this issue, the Review Commission decided to recommend that water quality matters continue to be the responsibility of the DOH.

The integration of water quality and water quantity matters may offer the benefit of simplified permitting procedures. However, certain practical concerns argue in favor of having separate agencies take responsibility for water quantity and water quality with provisions for closer coordination between the two agencies:

1. The DOH is the state agency that currently is designated to work with federal agencies regarding water quality matters. For example, under the federal Clean Water Act, accountability for water quality is assigned to the DOH.
2. The DOH currently administers several programs to ensure water quality and issues permits for the following:
 - a. Underground injection control,
 - b. Individual wastewater systems,
 - c. Wastewater treatment plants,
 - d. Coastal and surface water uses, and
 - e. Discharges and storm water run-off.
3. The DOH shares responsibility with the Office of State Planning for administering the federal Nonpoint Source Pollution Program.
4. The DOH currently has responsibility for preparing the Water Quality Plan, a component of the state Water Plan.

In addition to the above practical concerns, there is the philosophical concern of having water quality and water quantity matters under the control of a single director. The concern is that there would be a loss of checks and balance.

Closer coordination between the DOH and the CWRM is provided by requiring the CWRM to be the

lead agency in working with various state departments, including the DOH, to enter into memoranda of understanding that would identify each agency's specific role and responsibilities. The CWRM specifically is required to sort out the administration of programs affecting coastal waters in its memorandum of understanding with the DOH. The memorandum also could coordinate the enforcement authority of the two agencies.

The Review Commission notes that the current Water Quality Plan is not a plan but a (mere) review of the statutory requirements and responsibilities of the DOH. It therefore recommends that the DOH be required to submit the Water Quality Plan to the CWRM to determine whether the plan meets the planning guidelines established by the CWRM. If the CWRM does determine that the submitted plan meets the planning guidelines, then the CWRM would certify the plan. Revision of the plan by the DOH would require recertification by the CWRM.

4. The appropriate agencies of the state and county levels responsible for protecting, developing, and controlling water, their aims and objectives, the necessary powers to be conferred upon them, and their organizational support

The protection, regulation, and management of the State's water resources require the participation of several state and county agencies. The CWRM has a constitutional mandate to be the lead agency responsible for the following:

1. Set overall policies relating to:
 - a. Water conservation,
 - b. Water quality, and
 - c. Water use;
2. Define reasonable and beneficial uses;
3. Protect:
 - a. Ground and surface water resources, and
 - b. Watersheds and natural stream environments;
4. Establish criteria for water use priorities;
5. Assure appurtenant rights;
6. Assure existing correlative and riparian uses; and
7. Establish procedures for regulating all uses of Hawaii's water resources.

Even though the constitutional mandate is broad, the Review Commission recommends that, with the exception of water quality matters, the CWRM continue to be the lead agency. No true accountability can occur if responsibility is shared among a number of agencies.

To provide the CWRM with greater autonomy and, correspondingly, to underscore its accountability, the Review Commission recommends that the CWRM be removed from the Department of Land and Natural Resources (DLNR), where it currently resides as the Division of Water Resource Management, and attached to the DLNR for administrative purposes only. Currently, the chairperson of the Board of Land and Natural Resources (BLNR) serves as chairperson of the CWRM. To increase administrative distance between the DLNR and the CWRM, the Review Commission recommends that the chairperson of the BLNR serve as an ex-officio voting member of the CWRM but be ineligible to serve as chairperson of the CWRM. In addition, the Review Commission recommends that the chief executive officer of the CWRM not be a deputy director of

the DLNR, appointed by and answerable to the chairperson of the BLNR. Instead, the Review Commission recommends that the chief executive officer of the CWRM be the executive director of the CWRM, appointed by and answerable to the CWRM.

To provide for increased coordination and accountability, the Review Commission recommends that the CWRM be required to take the lead in working with the Departments of Health, Land and Natural Resources, Hawaiian Home Lands, and Agriculture, and with appropriate federal, state, and county agencies, to enter into memoranda of understanding that identify each agency's specific role and responsibilities for implementing the State Water Code. Memoranda of agreement also could be entered into to coordinate (1) the protection of coastal waters, (2) the protection and management of streams, and (3) the reuse of wastewater. Additional coordination is provided for through the components of the Hawaii Water Plan that the four state departments are required to prepare and submit to the CWRM for certification.

Through its recommendation that the CWRM be allowed to delegate authority to county agencies, the Review Commission recognizes the desirability of local control, whenever appropriate, and the perhaps over-broad responsibilities assigned to the CWRM by the constitutional amendment of 1978. The proposed hierarchy of water uses suggests a means to implement the delegation of permitting authority: The CWRM could retain all authority for issuing permits for reserved uses of groundwater and surface water; it would then delegate to appropriate county agencies the authority for issuing permits for all nonreserved uses of groundwater and surface water. Under the current State Water Code (§174C-48(b)) the CWRM is required to "delegate to the county boards of water supply the authority to allocate the use of water for municipal purposes, subject to the limits of water supply allocated to the county boards of water supply in their role as water purveyors."

The Review Commission recommends that this requirement be retained and fully implemented.

5. Hawaiian water rights

Even though Section 5, Act 45, Session Laws of Hawaii 1987, makes no specific mention of Hawaiian water rights, the Review Commission set aside ample time and resources to gain a better understanding of this important issue. It organized a workshop on the Implementation of Hawaiian Water Rights and followed it up with a public hearing. Also, it met with the Hawaiian Water Rights Task Force, which had been tasked by the CWRM to propose draft rules to Part IX of the State Water Code. Although rules were adopted by the CWRM for the other parts of the State Water Code, no rules have been adopted for Part IX.

As a result of its review of Hawaiian water rights, the Review Commission came to two general conclusions:

1. That more important than expanding Hawaiian water rights is establishing the means to implement existing Hawaiian water rights, and
2. That the adoption of administrative rules for Part IX will provide needed clarification of existing Hawaiian water rights.

Specifically, the Review Commission recommends that:

1. Hawaiian water rights, as set forth in the State Constitution, the Hawaiian Homes Commission Act of 1920, the State Water Code, and Act 325 of 1991 be recognized in the Hierarchy of Water Uses as reserved uses of water;
2. The DHHL be required to prepare a water plan that quantifies the Department's water needs for the foreseeable future;

3. The Office of Hawaiian Affairs be requested to prepare a water plan that quantifies all other Hawaiian water rights, including adequate amounts of water to (1) maintain stream flow to ensure the propagation of native species and (2) grow taro and other traditional crops on lands that were used for those purposes when those lands were converted to private ownership in the middle of the last century;
4. The CWRM adopt by rule procedures to validate claims to appurtenant rights; and
5. A Special Assistant, at the level of branch chief, be added to the staff of the CWRM to ensure that issues relating to Hawaiian water rights are adequately addressed.

6. Reuse of wastewater

Owing to time constraints, the Review Commission was not able fully to consider the role of the reuse of wastewater as a water source. The reuse of wastewater will become crucial as supplies of natural groundwater become scarce. Treated to the appropriate levels, wastewater should be put to greater use in dual domestic systems, on golf courses, and for industrial purposes. However, adequate treatment today is relatively costly. Also, more assurance is needed to determine that treated wastewater can be used safely in appropriate areas of the State.

The Review Commission has provided for the reuse of wastewater in the declaration of policy, the definitions of "water" or "waters of the State" and "water source," and the planning guideline that requires the CWRM to plan for total water management. Because the effective implementation of reuse policies will require cooperation and coordination among several agencies, the CWRM is given the responsibility of taking the lead in working with the DOH, county boards of water supply, and county departments of public works and/or wastewater management to enter into memoranda of understanding that will identify each agency's specific role and responsibilities.

7. User fees to supplement the resources of the Commission on Water Resource Management

Throughout its comprehensive review of the State Water Code, the Review Commission heard numerous accounts relating to the inadequate staffing and funding of the CWRM. The duties of the CWRM include:

1. Data gathering,
2. Issuing permits,
3. Planning,
4. Setting standards,
5. Public education, and
6. Dispute resolution.

The question of whether or not the CWRM is underfunded and understaffed could be resolved in large part through a management audit.

Members of the Review Commission were divided on the question of whether or not user fees should be created to help fund the CWRM. Some members argued that user fees are necessary and an appropriate means of resource enhancement. Other members argued that the question of adequate funding should be left in hands of the State Legislature; since water is used by everyone in the State, the State's general fund is the most appropriate source of funding for a state agency that regulates and manages the State's water resources.

8. Ten-year review

In section 29 (page 154) of the proposed bill (see Appendix B), the Review Commission recommends that the Legislature provide for the establishment of another review of the State Water Code ten years after the adoption of the amendments proposed in this report. In the manner provided for in Section 5, Act 45, SLH 1987, the commission would be a legislative commission, appointed jointly by the President of the Senate and the Speaker of the House of Representatives; placed within the Legislative Reference Bureau for administrative purposes; and given two years to perform a comprehensive review of the State Water Code and to develop recommendations for the improvement of the Code.

The Review Commission further recommends that the next review commission be asked to address the following issues:

1. The integration of water quality and water quantity matters for a unified management of the resource by a single lead agency as provided for under Article XI, Section 7, State Constitution;
2. The role of reclaimed wastewater and desalination in implementing a system of total water management; and
3. The CWRM's progress in establishing instream flow standards and the effectiveness of those standards.

9. Standing, public notice, hearings, and judicial review

The Review Commission has attempted to clarify (1) the class of persons with standing to file objections to a permit application, (2) the requirements for public notice of permit applications, (3) the procedures for holding hearings on permit applications and petitions to modify instream flow standards, and (4) the types of cases that may be appealed directly to the supreme court.

The hearing procedures provide for administrative processing of certain types or classes of permit applications that are not water-use permit applications. In addition, they provide for an expedited procedure to allow the chairperson of the CWRM to approve or deny water-use permit applications for a quantity of water not exceeding a certain threshold quantity. Other types of permit applications also may be processed through an expedited procedure.

The Review Commission acknowledges the input of the Deputy Attorney General assigned to the CWRM in drafting the sections on standing, public notice, hearings, and judicial review.

10. Effects of the Proposed Amendments on Other State Departments

The proposed amendments, if passed, will alter to some degree the duties, powers, authority, or programs of certain state and county agencies. (See Appendix B, sections 3 through 24 of the proposed bill.) The department that will be affected most is the DLNR, to which the CWRM and its staff will be attached for administrative purposes only. The Review Commission recommends that the CWRM be required to take the lead in working with the DLNR, the DOH, the DHHL, and the DOA to enter into memoranda of understanding that identify each agency's role in implementing the mandates of the State Water Code.

11. Conclusion

The proposed amendments to the State Water Code, if enacted into law, will have several significant results:

1. A comprehensive statewide permitting system will be established;
2. Permitting authority will be shared between the CWRM and the counties;
3. The CWRM will gain greater autonomy from the DLNR;
4. Water rights will be clarified, and water uses will be prioritized;
5. Hawaiian water rights, though not expanded, will be strengthened;
6. Additional planning requirements will result in more comprehensive quantification of water uses and needs; and
7. Decisions by the CWRM will no longer be made so much on a case-by-case basis but will be made instead more through the planning process and promulgation of rules.

The proposed amendments to the State Water Code should bring about a change in the manner in which decisions are made by the CWRM. Currently, the CWRM is attempting to develop an "administrative common law" through the decision making process. This approach provides the CWRM with considerable discretionary authority. However, it does not provide applicants for permits with a clear understanding of how decisions will be reached. Greater predictability in the decision-making process would be beneficial to both applicants and the public at large. Plans that quantify current and future water needs as well as identify the conflicts that may arise from competing needs will provide a context for sound decisionmaking. Rules governing the procedures and establishing the standards that are to be employed in decisionmaking will provide greater assurance that all applicants are dealt with in an equitable manner.

PART II:

COMMENTS ON THE PROPOSED AMENDMENTS TO HRS CHAPTER 174C, STATE WATER CODE

The following comments are meant to amplify, explain, and clarify the intent of the amendments proposed in the bill for an act relating to the State Water Code. (See Appendix B.) The page numbers refer to the pagination of Appendix B. The notation "174C- " refers to the numbered sections of the proposed bill.

PART I. ADMINISTRATIVE STRUCTURE

Page 2, 174C-2(a): The State has a trust obligation that goes beyond its police power to regulate use of water. The State's obligation includes the active protection and management of the waters within its jurisdiction for the use of all current and future residents. Article XI, §1, of the State Constitution provides that "All public natural resources are held in trust by the State for the benefit of the people."

Reasonable-beneficial use is an important standard against which applications for water-use permits should be measured. Another important standard is maintaining a balance among ecological, cultural, and consumptive uses of water

The reuse of water should be considered an important component of the State's water resource.

Page 2, 174C-2(b): The former system of designating some parts of the State as water management areas resulted in two sets of water laws, one for areas designated as water management areas where water-use permits are required and another for nondesignated areas where water-use permits are not required. Under this recommendation, the former system would be replaced over time—perhaps as long as ten years—with a unified statewide permit system.

Page 3, 174C-2(c): The Hawaii water plan is meant ultimately to quantify the amount of water that needs to be conserved and protected from use and the amount of water that would be available for immediate and possible future allocation. It is meant to be updated at frequent intervals with the best-available data.

Page 4, 174C-3 "Agricultural use": Under § 174C-M(a)(5) reservations of water may be petitioned for by the department of agriculture for agricultural use.

Page 5, 174C-3 "Change in use": Water for golf courses is considered a different class of use from water for agriculture. Both sugar cane cultivation and diversified agriculture are considered agriculture; but a change in use from the former to the latter would affect in most cases the quantity of water being used.

Page 6, 174C-3 "Coastal waters": The definition of "coastal waters" is taken from §342D-1, Hawaii Revised Statutes.

Page 7, 174C-3 "Correlative use": This definition is a definition of a type of use, not a type of right.

Page 7, 174C-3 "Estimated sustainable yield": Adequate pumping data are not available for most of the aquifers in the State. Hence, figures proposed and used to describe the sustainable yields of most aquifers should be considered only as estimates.

Page 7, 174C-3 "Existing correlative use": Existing correlative uses that have been in use since November 7, 1978, are "assured" by the State Constitution.

- Page 8, 174C-3 "Existing riparian use":** Existing riparian uses that have been in use since November 7, 1978, are "assured" by the State Constitution.
- Page 10, 174C-3 "Preexisting water use":** Preexisting water uses should not be confused with Constitutionally assured "existing" correlative and riparian uses.
- Page 11, 174-C "Riparian use":** This definition is a definition of a type of use, not a type of right.
- Page 11, 174C-3 "Stream":** The definition of "stream" incorporates elements of the definition of "continuous flowing water." The definition of the term "continuous flowing water" has been deleted.
- Page 13, 174C-3 "Water" or "waters of the State":** "Water" or "waters of the State" include the waters of privately held islands such as Lanai and Niihau. Coastal waters are included to enable the commission on water resource management (1) to regulate and manage waters that someday may be used for desalination and (2) because the interface between fresh and salt water is of importance in the management of stream systems. Atmospheric water is included to enable the commission to regulate and manage weather modification activities.
- Page 14, 174C-3 "Water management area," "designated area," or "designated water management area":** These areas are meant to include both water management areas designated pursuant to §174C-41 of the State Water Code as it was enacted in 1987 and the water management areas created by extending the water-use permit system pursuant to §174C-T of the proposed bill to amend the Water Code.
- Page 14, 174C-3 "Water source":** Reclaimed wastewater under certain conditions is considered a water source.
- Page 15, 174C-4(a):** Water-use permits are required for all waters leased or licensed by the State.
- Page 16, 174C-5(1):** A number of federal, state, and county agencies are responsible for developing, purveying, regulating, and managing water resources throughout the State. For example: the U. S. corps of engineers and the state department of health are responsible for protecting water quality; the state department of land and natural resources has certain water development responsibilities; and county boards of water supply serve as water purveyors. To improve coordination among these agencies and to provide for greater accountability on the part of the commission on water resource management, the commission is required to initiate memoranda of understanding that clarify the roles of these agencies and coordinate their activities.
- Page 17, 174C-5(2):** The comprehensive water-use permit system eventually should be extended throughout the entire State and should include both ground and surface water.
- Page 17, 174C-5(3):** The commission on water resource management will require permits that regulate: (1) water use, (2) stream-channel alteration, (3) stream-diversion works, (4) well construction, (5) exploratory wells, and (6) pump installation.
- Page 18, 174C-5(4):** The commission on water resource management will retain oversight over any permitting authority it may delegate to a county agency.
- Page 19, 174C-5(9):** The commission on water resource management is required to create and disseminate materials that explain in largely nontechnical language how the State Water Code and its administrative rules are interpreted and implemented. In addition, the commission is encouraged to work closely with community groups that express an interest in water-related issues.
- Page 22, 174C-5(15):** It is recognized that the commission on water resource management at times must make decisions without adequate information. In these instances—determining the sustainable yield of an aquifer, for example, or the amount of stream flow necessary to ensure the perpetuation of native species—the commis-

sion on water resource management is strongly encouraged to seek scientific advice from more than one source.

Page 23, 174C-6: The chief executive officer of the commission on water resource management no longer will be a deputy in the department of land and natural resources who is appointed by the chairperson of the board of land and natural resources, and the staff of the commission no longer will comprise a division of the department. Instead, the chief executive officer will be an executive director of a commission attached to the department for administrative purposes only. The executive director will be appointed by the commission.

Page 23, 174C-A: The special assistant's other duties may include becoming the specialist in the validation of appurtenant rights claims under part B and reviewing applications for water-use permits to ensure that the applications take appropriate account of unaddressed rights of native Hawaiians.

Page 24, 174C-7: The commission on water resource management is increased to nine part-time members to provide for broader representation:

1. Representative from Hawaii County.
2. Representative from Kauai County.
3. Representative from Maui County.
4. Representative from the City and County of Honolulu.
5. Representative from the Hawaiian community.
6. Chairperson of the board of land and natural resources.
7. Director of Health or the director's designated representative.
8. At-large member.
9. At-large member.

Also, it is hoped that a nine-member commission will be better able to achieve a quorum than a commission with only six members.

The four county representatives, the representative from the Hawaiian community, and the two at-large members will serve as unpaid members. It is not expected that they will be professional hydrologists, geologists, marine biologists, hydraulic engineers, or water-law experts. Instead, they should be members of the public with substantial and broad experience relating to water matters.

The chairperson of the department of land and natural resources will serve as an ex-officio voting member who would not be eligible to serve as chairperson of the commission.

The director of health or the director's designated representative will serve as an ex-officio voting member who would not be eligible to serve as chairperson of the commission. It would be appropriate for the deputy who is responsible for environmental health to serve as the director's designated representative.

Attaching the commission to the department of land of land and natural resources for administrative purposes only is meant to provide the commission with greater autonomy. Pursuant to §26-35, Hawaii Revised Statutes, the commission will not be subject to the control of the chairperson of the department of land and natural resources with regard to any of its quasi-judicial functions or to the exercise of its functions, duties, and powers.

Page 26, 174C-10: In this section that combines dispute resolution and citizen complaints, the commission on water resource management is provided with increased authority to handle citizen complaints and requests for dispute resolution concerning a number of water-related issues. To investigate complaints the commission may hold hearings, appoint investigators, issue subpoenas, and enter upon private property. The commission is required to take steps to enable the investigators to carry out their duties impartially.

Page 30, 174C-B: This new section clarifies the requirements for standing.

Page 31, 174C-C1: This new section clarifies the requirements for public notice of permit applications.

Page 33, 174C-C2: This section clarifies the requirements for hearings, including contested-case hearings, on permit applications and petitions to modify instream flow standards. It requires the commission on water resource management to adopt rules establishing procedures for permit applications and petitions to modify an instream flow standard.

This section also provides for an expedited procedure for certain classes of water use or uses under certain threshold levels that enables the chairperson of the commission to approve or deny permit applications for such water uses. The expedited procedure is meant to be used only for uses having minimal impact on the biological, chemical, and physical integrity of the water resource.

Page 37, 174C-12: This section identifies the types of cases that may be appealed directly to the supreme court.

Page 39, 174C-E: Water-use permits may be revoked for, among other reasons, partial or total nonuse of the water allowed by the permit for four or more continuous years. Page 40, 174C-15: This section provides for increased penalties for reckless, knowing, or intentional violations of the State Water Code. The maximum fine is now \$25,000 each day for a continuing violation. Moneys obtained from fines may be kept by the commission on water resource management to help defray its administrative costs.

PART A. HAWAII WATER PLAN

Page 41, 174C-F: The planning goals of the Hawaii water plan are now listed clearly up front instead of being buried in the part on planning. Integration of the various components of the plan is now a goal, and so is intelligibility.

Page 42, 174C-G: This section on planning data provides for comprehensive data gathering. As additional areas of the state are included in the unified statewide permit system, the commission on water resource management will need additional and better-organized data to help it make sound and timely decisions on permit applications. Of signal importance is the early quantification of surface and ground water that may be reserved under part B. Early quantification will assist the commission in resolving competing claims for water; but neither the lack of quantification nor actual reservations of water for future use should result in the denial of water for any current reasonable-beneficial use. Assessing the reliability of data, especially as they are used to describe the sustainable yields of aquifers, will be another basic responsibility of the commission. To minimize duplication of effort, the commission should clarify and coordinate data-gathering responsibilities through memoranda of understanding.

Page 44, 174C-H: This section provides for a Hawaii water plan that consists of twelve components:

1. A water resource protection plan to be prepared by the commission on water resource management. This plan, among other things, is meant to serve as (1) a "template" for the revision of the county water use and development plans and the preparation of the additional components of the Hawaii water plan and (2) a means to integrate and coordinate the findings and recommendations of the county plans and the other components of the Hawaii water plan.
2. A county water use and development plan to be prepared by Hawaii County.
3. A county water use and development plan to be prepared by Kauai County.
4. A county water use and development plan to be prepared by Maui County.
5. A county water use and development plan to be prepared by the City and County of Honolulu.

Each county plan is to be adopted by ordinance and consistent with each county's land use plan and policies and with state land use classifications and policies.

6. A water quality plan to be prepared by the department of health. See also §68.
7. A state water projects plan to be prepared by the department of land and natural resources in conjunction with other state agencies.
8. An agricultural water plan to be prepared by the department of agriculture in conjunction with the agribusiness development corporation.
9. A Hawaiian home lands water plan to be prepared by the department of Hawaiian home lands.
10. A native Hawaiian water plan to be requested from the office of Hawaiian affairs.
11. A federal/military water plan to be requested from federal agencies and branches of the U. S. military.
12. A data needs plan to be prepared by the commission.

This plan, among other things, is meant to set priorities for further data gathering.

The plan components are meant to be updated regularly.

The commission also may prepare plans that address other needs of critical concern.

The legislature is asked to provide funding not to exceed a certain level to enable the counties to restructure and update the water use and development plans.

Page 47, 174C-I: Of the twelve components that comprise the Hawaii water plan, only two are prepared by the commission on water resource management. The commission, therefore, is required to establish planning guidelines that will assist the other agencies and entities that will be involved in preparing components of the Hawaii water plan. Appropriate planning guidelines should be included in the memoranda of agreement drawn up between the commission and other agencies responsible for preparing components of the Hawaii water plan. The guideline relating to total water management, in particular, will require considerable inter-agency cooperation and coordination.

Page 49, 174C-J: All components not prepared by the commission on water resource management will be reviewed by the commission and certified, provided all agreed-upon planning guidelines are met.

Page 49, 174C-K: Each state department responsible for preparing a component of the Hawaii water plan is required to hold appropriate public hearings on all islands whose water resources will be affected by that component of the plan. County water use and development plans, it is expected, will receive public scrutiny as part of the hearing process required for all proposed ordinances.

PART B. HIERARCHY OF WATER USES

Page 49, 174C-L(a): The review of the State Water Code brought to light the existence of several types of water rights and uses that may be claimed as priority uses of water. They are:

1. For conservation

Article XI, §7, State Constitution, requires the State to protect "ground and surface water resources...and natural stream environments."

Article XI, §1, State Constitution, requires the State and its political subdivisions to "conserve and protect Hawaii's...natural resources, including...water."

Article XII, §7, State Constitution, requires the State to “protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua’a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.” These rights imply a duty to protect stream conditions that enable these rights to be exercised.

2. For appurtenant rights

Article XI, § 7, State Constitution, assures appurtenant rights.

3. For Hawaiian home lands

§221, Hawaiian Homes Commission Act of 1920, gives the department of Hawaiian home lands (a) first “call” on any government water, whether leased or not, and whether reserved in the lease or not, for livestock, aquaculture, domestic, and agricultural uses and (b) the right to use, free of all charge, any government water whether leased or not for livestock, aquaculture, domestic, and agricultural purposes.

4. For existing correlative and riparian uses

Article XI, §7, State Constitution, assures “existing correlative and riparian uses.”

5. For agriculture

Article XI, §3, State Constitution, requires the State to “conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.” A duty is implied to reserve adequate amounts of water to carry out this constitutional mandate.

It is the Review Commission’s view that the rights that comprise the hierarchy exist in current state law. None of the various rights is intended to be expanded. Gathering these rights in a separate part of the State Water Code underscores their existence and serves as a reminder to everyone that they must be respected when allocation decisions are made. While a balancing of interests is often appropriate when principles are in conflict, it was felt that some structure is needed to ensure that decisions made by the commission on water resource management are reasonably consistent. The establishment of “criteria for water use priorities,” it should be noted, is mandated by the State Constitution. To resolve every permit decision as a balance of interests was felt to be inefficient, conducive to excessive disputes, and contrary to law. The commission, therefore, is required to be guided by the hierarchy of water uses when making permit decisions, resolving disputes and citizen complaints, developing the Hawaii water plan, and making allocation and reallocation decisions, including modifications of existing permits.

Page 50, 174C-L(b): The reserved uses that comprise the hierarchy are listed in order of priority. There is the presumption that all reserved uses are beneficial. Nonetheless, reserved uses, like all other uses, are restricted to reasonable quantities of water.

Federal and state law and common sense require that the conservation reserve be made the apex of the hierarchy. Traditional and customary Hawaiian practices are thought to be consistent with the conservation reserve as it applies to surface water. The appurtenant rights reserve essentially is meant to provide water for lands that were used for taro cultivation at the time those lands were converted to private ownership in the middle of the last century. The Hawaiian home lands reserve is meant to carry out the federal mandate of the Hawaiian Homes Commission Act of 1920 that sought to provide essential resources, water included, to enable native Hawaiians to utilize the lands that were set aside for them. Act 325 of 1991, it should be noted, requires appropriate components of the Hawaii water plan to “incorporate the current and foreseeable development and

use needs of the department of Hawaiian home lands for water as provided in §221 of the Hawaiian Homes Commission Act.” The existing correlative and riparian uses reserve is meant to assure correlative and riparian uses in continual use since November 7, 1978; in general, these uses are limited only by constraints imposed by the common law with respect to a user’s correlative or riparian rights. The agricultural reserve is meant to carry out the duty implied in the State Constitution to “conserve and protect agricultural lands” and “promote diversified agriculture.”

A lower priority use should not be granted an allocation of water to the extent that allocation will result in the denial or diminishment of water for a known higher priority use; however, permits need not be held up for lack of knowing or quantifying higher priority uses: the commission may approve the use conditional upon future reduction as higher priority uses are known or quantified. When a lower priority use is at any time found to be in conflict with a higher use, then that lower priority use will be treated as a provisional use. Because the commission will not have a “snapshot” record of all higher priority uses when it is required to make a particular allocation decision, many allocations of water may in the future come to be regarded as provisional. In some cases only a portion of the use may be in conflict, and the use provisional only to that extent. It is anticipated that in many cases only minor adjustments may be needed in order to accommodate higher priority uses. The management challenge to the commission, therefore, will be broadened to include: (1) early quantification of water (where possible) for the various reserved uses to estimate how much water will be available for allocation, (2) more focused planning to ensure that adequate quantities of water are developed in time to accommodate future reasonable-beneficial uses, and (3) clearly worked-out procedures to manage the timely diminution or elimination of provisional uses which are regarded by the commission as nonconforming.

Page 50, 174C-M: Protecting the biological, chemical, and physical integrity of streams is a requirement of the federal Clean Water Act. The commission on water resource management will have discretionary authority to determine, on a stream-by-stream basis, the amount of water that must be reserved for conservation purposes and to allow for reasonable nonconsumptive instream uses that are traditional and customary Hawaiian practices. The conservation reserve, therefore, is not meant to be a uniform and rigidly applied standard.

Appurtenant rights, in order to be exercised, must be validated by the commission. If the claims of two or more holders of validated appurtenant rights are in conflict, the commission may require that available stream water be shared by both or among all of them.

Claims for stream water to be used by the beneficiaries of the Hawaiian Homes Commission Act of 1920 will have a lower priority than validated appurtenant-rights claims. Reservations of water for the department, which are made by the commission by rule, may be adjusted—that is, increased or decreased—by the commission by rule.

Existing riparian uses that have been in existence since November 7, 1978, are assured by the State Constitution. Under certain conditions, however, consistent with the doctrine of riparian rights, the amounts of stream water set aside for these uses may be decreased.

The department of agriculture, like the department of Hawaiian home lands, may petition the commission to reserve by rule stream water for agricultural use. The reservations are meant to preserve agricultural water for agricultural use when sugar cane plantations cease operation and alternative crops have yet to be developed. The reservations also are meant to ensure that important agricultural lands throughout the State, once they are identified as such, will be able to receive sufficient quantities of stream water to allow them to be productively cultivated. Reservations of water for the department, which are made by the commission by rule, may be adjusted—that is, increased or decreased—by the commission by rule.

Nonreserved uses of stream water include, in the following order of priority, (1) riparian uses that are not assured by the State Constitution, (2) instream uses for cultural, scenic, and recreational purposes, and (3) all

other reasonable-beneficial uses. The allocation of nonreserved uses of stream water may be delegated to county agencies.

Page 52, 174C-N: The conservation reserve of groundwater is meant to protect groundwater supplies for all future generations and the biological, chemical, and physical integrity of streams wherever the commission on water resource management determines that a source of stream water is an aquifer.

The other reserved uses of groundwater are somewhat analogous to the other reserved uses of stream water. However, groundwater may not be reserved for appurtenant rights or for agricultural use. Existing correlative uses that have been in existence since November 7, 1978, are assured by the State Constitution. Under certain conditions, however, consistent with the doctrine of correlative rights, the amounts of groundwater set aside for existing correlative uses may be decreased.

Nonreserved uses of groundwater include any other reasonable-beneficial groundwater uses. The allocation of nonreserved uses of groundwater may be delegated to county agencies.

Page 53, 174C-O: The procedures are meant to clarify how the commission on water resource management, among other things, will determine (1) whether a claim is valid and (2) the appropriate amounts of water necessary for taro cultivation.

Page 53, 174C-P: Appurtenant rights are preserved intact even if they are not claimed or exercised.

Page 53, 174C-Q: Should a water shortage occur in an area, the commission on water resource management may adjust the amount of water available for reserved or nonreserved uses. The commission also may make adjustments—that is, increase or decrease allocations—as unexercised rights become known or as better information or data become available. The commission, in addition, has broad authority to reserve water in any area of the State, whether that area is part of the uniform statewide permit system or not. Unless a reservation of water has been made under part B, all other “reservations” must be used within four years.

Page 54, 174C-R: Claims against uses considered inconsistent with the hierarchies in part B may be filed only by persons who can show harm to their own reasonable-beneficial uses of water. This criterion is deemed consistent with the present common law of the State.

Page 54, 174C-S: The application of the hierarchy of uses will bring to light uses—whether permitted or not—that are inconsistent with legally established orders of priority. These uses will be identified by the commission on water resource management as provisional uses. The commission, after notice and a hearing, will determine the nature and extent of an identified provisional use and the higher priority uses being harmed. Then, the commission can take either of two courses of action: (1) issue a water use permit for the provisional use subject to a specified duration and other conditions as the commission determines appropriate, or (2) declare the provisional use to be nonconforming and establish a management plan to reduce, modify, or phase out the nonconforming use. The management plan may require trial reductions in the nonconforming uses.

Nonconforming uses are not illegal, but they may not be enlarged, altered, extended, resumed if ceased, or restored if destroyed. However, repairs may be made to nonconforming-use systems during the periods they are allowed to remain in operation.

Nonconforming uses may not be changed without prior approval of the commission.

The commission will adopt rules to establish guidelines and standards to implement this section.

PART IV. REGULATION OF WATER USE

Page 61, 174C-T: This section provides for the phasing in, over a ten year period, of a uniform statewide permit system. The commission on water resource management is required to work with the counties to establish the sequence and timing for phasing in the water use permit system. The phasing in may be accomplished in the following ways:

1. By extending the water use permit system geographically. Currently, most of the island of Oahu and the entire island of Molokai are water management areas where water use permits are required for the use of groundwater.
2. By requiring water use permits for certain classes or types of use. Classes of use include municipal, military, agricultural, golf course, and industrial. Types of use include surface water and groundwater.
3. By establishing levels of use above which water use permits will be required.
4. By identifying areas of critical concern where water use permits will be required. These areas may be areas where serious water disputes are occurring, where an aquifer or other water source may be threatened, or where extensive well-drilling may require the spacing of wells to be carefully coordinated.

The section is meant to provide the commission with considerable discretionary authority as to how it accomplishes the phasing in of a uniform statewide permit system. However, it is required to seek input from the counties as to how the phasing in should be done in each county. Within eighteen months of the effective date of the Act, the commission is required to adopt rules that establish the sequence and timing for the phasing in of the permit system. The rules are to include a schedule for requiring permits for surface water uses in previously designated groundwater management areas. Once rules have been adopted, the commission is required to hold informational briefings on each island to explain how the phasing in will be accomplished on that island. The commission should be able to complete the phasing in of the unified statewide permit system within ten years.

Page 62, 174C-U: This section exempts certain uses: use of catchment systems, domestic consumption of water by individual users, and reasonable-beneficial instream uses.

Page 63, 174C-48: The holder of a water use permit may transport groundwater and surface water outside the watershed from which it was taken unless the water use permit expressly prohibits transportation. A water use permit is required for any release of water. Water use permits are now required for nonconsumptive uses that might destroy any portion of a water source or that might harm the biological, chemical, or physical integrity of a water source.

When a geographic area or a class or a type of use is brought into the statewide permit system, all water uses within that area, class, or type may be continued only for a limited period of time. The duration for continuing the use, which is now considered a preexisting use, will be established by the commission by rule. After the deadline lapses, the use may be continued only by filing an application for a preexisting use.

Page 64, 174C-V: The commission on water resource management is required to make bulk allocations to county boards of water supply which, in turn, the county boards will allocate for municipal purposes. In addition, the commission may delegate some or all of its water use permitting authority to a county agency, at the request of that county agency. Delegation of this authority, however, may occur only if:

1. The county agency is not a purveyor or developer of water. A purveyor or developer of water should not also be a regulator of water use.
2. The county agency has available the services of qualified hydrologists, geologists, engineers, and other staff needed to make sound and timely decisions.

3. The commission retains complete oversight authority.
4. The commission may review any decision made by the county agency.
5. The commission has established guidelines under which it may rescind any delegation of authority.

Page 65, 174C-49: Instead of the seven conditions that currently must be met in order to receive a water use permit, only five conditions are now required:

1. A proposed use must be consistent with the hierarchy of uses in part B.
2. A proposed use must be a reasonable-beneficial use.
3. A proposed use must not be inconsistent with the Hawaii water plan.
4. A proposed use must not damage or waste the water resource.
5. A proposed use must comply with appropriate water conservation practices.

Counties are given forty-five days only to inform the commission if a proposed use is inconsistent with county land use plans and policies. County land use plans and policies as they relate to a county's water use and development needs should be included in each county's water use and development plan. County water use and development plans are components of the Hawaii water plan.

Page 71, 174C-W: When a geographic area or a class or a type of use is brought into the statewide permit system, all water uses within that area, class, or type may be continued only for a limited period of time. By rule the commission will establish a deadline for submitting applications for what are now considered to be preexisting uses. The conditions that must be met to receive permits for preexisting uses are less stringent than they are for new uses. However, if the deadline for submitting applications for preexisting uses is not met, then the preexisting uses will be considered new uses and subject to the more stringent conditions required for new uses.

The less-stringent conditions required for preexisting uses include:

1. Verification of the quantity of water consumed by the preexisting use.
2. Verification that the preexisting use is a reasonable-beneficial use.
3. Consistency with the hierarchy of uses in part B.

Page 72, 174C-X: The commission on water resource management may issue limited-duration interim permits in cases where an applicant can establish that a preexisting use is a reasonable-beneficial use and that it is consistent with the hierarchy of uses in part B but cannot immediately verify the quantity of water consumed. The applicant must verify the quantity of water consumed within the duration specified in the interim permit. Successive interim permits of limited duration may be issued, provided the aggregate time does not exceed five years. As a condition of an interim permit, the commission may require the installation of water meters or gauges to determine the quantity of water consumed. If verification cannot be completed within five years, the applicant must apply for a new water use permit in order to continue the use.

Page 77, 174C-53(c): The commission on water resource management is now required to adopt by rule the conditions that may be imposed on permits and the circumstances under which such conditions may be imposed.

Page 78, 174C-54(b): The hierarchy of uses in part B will play an important role in resolving conflicts between competing applications. In cases where lower priority uses are in competition with applications for higher uses, the commission on water resource management may grant the pending application, thereby invoking the procedures in §174C-S regarding provisional uses.

Page 78, 174C-55: This section provides for perpetual water use permits. Once a water use permit is issued,

the water use may be continued until a change in use, as defined in §174C-3, occurs. Adjustments in allocation amounts may be made, however, as higher priority uses become known and are issued permits.

Page 78, 174C-56: Water use permits will be reviewed at least once every twenty years. There is the likelihood that they will be reviewed more often (1) to determine whether the actual use complies with the use authorized in the permit, (2) to manage the phasing out of nonconforming uses, or (3) to ensure reasonable compliance with appropriate water conservation practices.

Page 79, 174C-57: A change in use as defined in §174C-3 requires the user to apply for a new water use permit. If the change in use results in a reduction of water used, then the user is required simply to report the change in use to the commission on water resource management within ninety days. A user who wishes to modify the terms or conditions of a water use permit must apply for a new water use permit.

Page 82, 174C-59(b): Water use permits may be transferred from one permit holder to another provided no change in use as defined in §174C-3 occurs.

PART V. WATER QUALITY

Page 86, 174C-68: The department of health is now required to submit the water quality plan to the commission on water resource management for certification that the plan meets the planning guidelines set under part II. Recertification is required whenever the plan is revised.

PART C. INSTREAM USES OF WATER

Page 88, 174C-Y: This section requires the commission on water resource management to establish and administer a statewide instream use protection program to protect and enhance beneficial instream uses of water. Where practicable, the program also is meant to reestablish these uses. The commission is required to cooperate with other appropriate government agencies such as the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the U.S. Geological Survey, the department of land and natural resource, the department of health, and county water, planning, and public works departments in establishing the program. The data collection requirements are considerable, in particular with regard to stream flow characteristics. The commission is required to implement the instream flow standards, once they are established, in making permit decisions that may affect stream flow or water in state watersheds.

Page 88, 174C-Z: The commission on water resource management is required to adopt rules that provide guidelines for the periodic review of the three hundred thirty-five-plus streams in the State, on a stream-by-stream basis, to identify which streams need an instream flow standard to protect "the public interest in waters of the State." The commission is required to report in writing on the individual streams that are to be protected through instream flow standards.

Page 89, 174C-AA: The commission on water resource management is required to consult with a broad range of agencies and persons with an interest in or specialized or expert knowledge about instream flow standards or particular streams.

Page 89, 174C-CC: The commission on water resource management is required to adopt rules that establish instream flow standards for the streams the commission has identified as needing such standards to protect "the public interest in waters of the State." The instream flow standards, at a minimum, must establish variable flows of water necessary to protect fish and wildlife as well as recreational, aesthetic, and scenic uses. At the same time, the commission is required to analyze the economic and noneconomic impacts caused by restricting both instream and noninstream uses. Before the commission establishes an instream flow standard to preserve,

enhance, or restore instream values, it is first required to seek physical solutions to avoid or minimize any impacts on existing instream and noninstream uses.

Page 91, 174C-EE: This section gives the commission on water resource management the authority to adopt and modify interim instream flow standards. The interim instream flow standards may apply to a single stream or to all streams within a specified geographic area.

Page 91, 174C-GG: Any person who wishes to make a stream channel alteration must first obtain a permit to do so from the commission on water resource management. However, the routine maintenance of streambeds, drainageways, and existing facilities do not require permits. A permit for a stream channel alteration does not confer vested rights to use the stream water. Use of stream water requires a water use permit. The commission is required to adopt rules for processing and considering applications for stream channel alterations.

PART VII. WELLS

Page 97, 174C-84(c): A permit for constructing a well or an exploratory well does not confer vested rights to use water from the well. Use of groundwater requires a water use permit.

PART VIII. STREAM DIVERSION WORKS

Page 103, 174C-93: A permit for constructing or altering a stream diversion works does not confer vested rights to use water from the stream. Use of stream water requires a water use permit.

PART IX. NATIVE HAWAIIAN WATER RIGHTS

Page 108, 174C-101(c): The exercise of traditional and customary is subject to reasonable conservation practices.

PART III:

PURPOSE, MEMBERSHIP, WORK PROGRAM, AND EXPENDITURES

1. Background and purpose

The Review Commission on the State Water Code was established pursuant to Section 5, Act 45, Session Laws of Hawaii 1987 to perform a comprehensive review of the State Water Code and to develop recommendations for its improvement. (See Appendix A.) It should be noted that Act 45, which was passed on May 29, 1987, contains the legislation that created the State Water Code. The Act, which became effective on July 1, 1987, has been codified as Chapter 174C, State Water Code, Hawaii Revised Statutes. The Act's Section 5 requires—but does not limit—the Review Commission to review:

- (1) all water issues addressed in the state water code;
- (2) other water matters of fundamental importance which should be dealt with in a state water code, but which have not yet been incorporated, such as the identification and definition of public and private rights to waters, the institution of a comprehensive statewide permit system to regulate all types and uses of water, the integration of water quality and water quantity matters for a unified management of the resource by a single lead agency; and
- (3) the appropriate agencies of the state and county levels responsible for protecting, developing, and controlling water, their aims and objectives, the necessary powers to be conferred upon them, and their organizational support.

The Act required the Review Commission to begin its review work five years following the passage of the State Water Code and to complete its work within a period of two years by submitting a report of its findings and recommendations to the Legislature. The Review Commission will cease to exist one year after the submission of the report.

2. Members

The Review Commission is composed of nine appointed members. Seven members of the Review Commission were appointed on September 25, 1993, by means of a joint letter from then-Senate President Richard S. H. Wong and then-Speaker of the House Daniel J. Kihano. Two additional members, James Apana from Maui and Alan Inaba from the Big Island, were appointed on June 29, 1994, by means of a joint letter from Senate President Norman Mizuguchi and Speaker of the House Joseph Souki. The appointed members are:

Mr. James Apana
Ms. Bina Chun
Mr. Kazu Hayashida
Ms. Charlene Hoe
Mr. Alan Inaba
Mr. Douglas MacDougal
Mr. Alan Murakami
Mr. Ray Sato
Mr. Fred Trotter

3. Organization

The following members served as officers of the Review Commission:

Fred Trotter, Chair
Ray Sato, Vice Chair
Charlene Hoe, Secretary

The following members served on the Subcommittee on Legal Research:

Douglas MacDougal, Chair
Kazu Hayashida
Alan Murakami

The Review Commission received administrative support from the Legislative Reference Bureau, which was represented at meetings by its Assistant Director, Charles H. Nishimura. It also received legal advice from Lynn Otaguro and James Paige, the Deputy Attorneys General assigned to the Review Commission.

In January 1993 the Review Commission hired Warren Iwasa as its Executive Director. Keahi Renaud was hired as the Office Services/Research Assistant in May 1993.

The Review Commission held 52 regular meetings, 12 public informational meetings, and 11 public hearings. The Subcommittee on Legal Research held nine meetings.

4. Meetings

The Review Commission on the State Water Code convened its first meeting on November 13, 1992. (See Appendix C for a list of all meetings of the Review Commission.) Regular meetings were held in the third floor board room of the Board of Water Supply, City and County of Honolulu. The Review Commission met with representatives of a number of federal, state, and county agencies with responsibilities for regulating and managing the State's water resources. Briefings/discussions were conducted with representatives of the following agencies:

Federal

- ▶ U.S. Geological Survey
- ▶ U.S. Army Corps of Engineers—two meetings
- ▶ U.S. Environmental Protection Agency

State

- ▶ Commission on Water Resource Management (CWRM), Department of Land and Natural Resources (DLNR)—five meetings
- ▶ CWRM staff—four meetings
- ▶ Division of Water and Land Development, DLNR
- ▶ Stream Protection and Management Task Force, CWRM
- ▶ Hawaiian Water Rights Task Force, CWRM
- ▶ Department of Agriculture
- ▶ Department of Hawaiian Home Lands
- ▶ Department of Health—two meetings
- ▶ Office of Hawaiian Affairs
- ▶ Office of State Planning

County

- ▶ Department of Public Works, City and County of Honolulu
- ▶ Department of Wastewater Management, City and County of Honolulu
- ▶ Department of Water Supply, Maui County
- ▶ Department of Water Supply, Hawaii County

Others

- ▶ Yukio Naito, Chair, Public Utilities Commission (Mr. Naito served as project coordinator for the Legislature's earlier Advisory Study Commission on Water Resources, which submitted its report to the Legislature in January 1985.)
- ▶ Ray Jay Davis, Professor of Law, J. Reuben Clark Law School, Brigham Young University (Prof. Davis is the compiler of the American Society of Civil Engineers' Model State Water Code.)
- ▶ Nell Cammack and Karen Essene (Ms. Cammack and Ms. Essene prepared a study for the Review Commission entitled "Study of Laws, Administrative Rules, and Regulations Relating to the Protection, Regulation, and Management of Water Resources in Hawaii.")

The Review Commission organized a Subcommittee on Legal Research to undertake legal research to supplement the process of information gathering. The Subcommittee met with several attorneys and a planner who are regarded as exceptionally well informed about matters pertaining to the State Water Code:

- ▶ William Tam, Deputy Attorney General assigned to the CWRM
- ▶ Ron Albu, attorney
- ▶ Elizabeth Pa Martin, President, Native Hawaiian Advisory Council
- ▶ Jon Van Dyke, Professor of Law, Richardson School of Law, University of Hawaii
- ▶ Williamson Chang, Professor of Law, Richardson School of Law, University of Hawaii
- ▶ Eugene Dashiell, planner and consultant to the CWRM's Appurtenant Rights Advisory Committee
- ▶ George Cooper, attorney and consultant to the CWRM's Appurtenant Rights Advisory Committee

In addition, Lynn Otaguro, the Deputy Attorney General assigned to the Review Commission, carried out legal research on the following issues:

- ▶ The intent of Article XI, Section 7, State Constitution, obligating the State to protect, control, and regulate the use of Hawaii's water resources for the benefit of its people by providing for a water resources agency;
- ▶ The intent of Section 221, Hawaiians Homes Commission Act, dealing with water on Hawaiian home lands;
- ▶ The legislative intent of Section 174C-2(a), recognizing that the waters of the State are held for the benefit of the citizens of the State;
- ▶ Act 325, Session Laws of Hawaii 1991, allowing the CWRM to reserve adequate water for future development and use on Hawaiian home lands; and
- ▶ Common-law issues related to water rights in Hawaii.

5. Public informational meetings

As part of the process of information gathering, the Review Commission conducted a series of 12 public informational meetings on all major islands during the months of July through September 1993. (See Appendix D for a list of all persons who provided comments at the public informational meetings.) The main purpose of the informational meetings was to allow the public to express its views about the State Water Code and how it might be improved. Attendance, recorded below based on persons who signed in, shows strong interest in water-related issues. Copies of HRS Chapter 174C, the State Water Code, and other key statutes relating to the protection and management of the State's water resources were distributed at all 12 meetings. Nearly 50 sets of written comments were received from people who attended the meetings. Copies of all written comments have been distributed to the designated depositories.

The public informational meetings were held at the following locations:

Oahu

- ▶ Heeia Elementary School
Wednesday, July 7, 1993
Attendance: 36 people
- ▶ Nanakuli Elementary School
 - 1. Thursday, July 8, 1993
Attendance: 17 people
 - 2. Thursday, September 16, 1993
Attendance: 20 people
- ▶ Mabel Smyth Auditorium
Wednesday, August 25, 1993
Attendance: 43 people
- ▶ Hauula Elementary School
Wednesday, September 22, 1993
Attendance: 32 people

Hawaii

- ▶ Hawaii County Council Chambers
Wednesday, July 14, 1993
Attendance: 12 people
- ▶ Kealahou Intermediate School
Thursday, July 15, 1993
Attendance: 24 people

Kauai

- ▶ Kauai County Council Chambers
Tuesday, July 27, 1993
Attendance: 21 people

Lanai

- ▶ Lanai High & Elementary School
Tuesday, August 3, 1993
Attendance: 10 people

Molokai

- ▶ Mitchell Pauole Center
Thursday, August 5, 1993
Attendance: 21 people

Maui

- ▶ Maui County Council Chamber
Wednesday, August 18, 1993
Attendance: 26 people
- ▶ Hana High & Elementary School
Thursday, August 19, 1993
Attendance: 15 people

6. Public hearings

The Review Commission conducted a series of ten public hearings on all major islands from June through July, 1994. (See Appendix D for a list of all persons who provided testimony at the public hearings.) The main purpose of the hearings was to receive comments from the public regarding the Review Commission's 82 proposals to improve the State Water Code. The Review Commission's proposals were made available to the public via a tabloid insert in the June 13, 1994, issue of the Honolulu Star-Bulletin. Attendance, recorded below based on persons who signed in, shows strong interest in water-related issues. Copies of the tabloid and other informational materials were distributed at all ten hearings. Nearly 60 sets of written testimony were received in response to the tabloid insert. Copies of all written testimony have been distributed to the designated depositories.

The public hearings were held at the following locations:

Oahu

- ▶ Kaaawa Elementary School
Tuesday, June 28, 1994
Attendance: 19 people
- ▶ Nanakuli Elementary School
Wednesday, June 29, 1994
Attendance: 12 people
- ▶ Honolulu City Council Chambers
Wednesday, July 27, 1994
Attendance: 43 people

Kauai

- ▶ Kauai County Council Chambers
Thursday, June 30, 1994
Attendance: 23 people

Hawaii

- ▶ Hawaii County Council Chambers
Wednesday, July 6, 1994
Attendance: 18 people

- ▶ Kealahou Intermediate School
Thursday, July 7, 1994
Attendance: 20 people

Lanai

- ▶ Lanai High & Elementary School
Wednesday, July 13, 1994
Attendance: 10 people

Molokai

- ▶ Mitchell Pauole Center
Thursday, July 14, 1994
Attendance: 14 people

Maui

- ▶ Maui County Council Chamber
Wednesday, July 20, 1994
Attendance: 50 people
- ▶ Hana High & Elementary School
Thursday, July 21, 1994
Attendance: 6 people

7. Publicity

The Review Commission compiled a data base of over 700 people and organizations who have an interest in water issues. Nine mailouts were made to keep the public informed about the ongoing work of the Review Commission. Specifically, mailouts were conducted to distribute the Review Commission's (1) updated meeting schedule and information about its members, (2) Interim Report, (3) Call for Technical Papers on the Implementation of Hawaiian Water Rights, and (4) Tabloid Insert containing the 82 proposals to improve the State Water Code. To publicize further the work of the Review Commission, space ads were purchased in the Honolulu Advertiser. The Honolulu Star-Bulletin published a Viewpoint piece by the Chair of the Review Commission along with the statewide schedule of public informational meetings. The Honolulu Advertiser published a Focus piece by the Chair of the Review Commission along with a statewide schedule of public hearings. Other print media carried notices of specific public informational meetings and hearings. News releases were sent to an extensive list of the news media; follow up phone calls were made to radio stations to request publicity as specific meeting dates approached.

8. Depositories

In order to keep the general public informed of its work, the Review Commission staff established depositories on all major islands to allow the public to review minutes of meetings, written comments, and other documents relating to the ongoing work of the Review Commission. Twelve public libraries were selected with the help of Bart Kane, the State Librarian. Other depositories include the four county boards of water supply, the University of Hawaii's Hamilton Library and William S. Richardson School of Law Library, and the Legislative Reference Bureau Library, which also maintains a collection of audio tape recordings of all regular meetings of the Review Commission.

Oahu

- ▶ Honolulu Board of Water Supply
- ▶ Legislative Reference Bureau Library
Hawaii State Capitol
- ▶ Special Collections
Hamilton Library, Room 502
University of Hawaii at Manoa
- ▶ William S. Richardson School Law Library
University of Hawaii at Manoa
- ▶ Pacific Section & Government Documents Section
Hawaii State Library

(Thirteen copies were delivered to the Main State Library, from which eleven were distributed to other state public libraries.)

- ▶ Kahuku Public Library
- ▶ Kaneohe Public Library
- ▶ McCully Public Library
- ▶ Pearl City Public Library
- ▶ Waianae Public Library

Maui

- ▶ Maui Department of Water Supply
- ▶ Kahului Public Library

Molokai

- ▶ Kaunakakai Public Library

Lanai

- ▶ Lanai City Public Library

Kauai

- ▶ Kauai Department of Water
- ▶ Lihue Public Library

Hawaii

- ▶ Hawaii Department of Water Supply
- ▶ Hilo Public Library
- ▶ Kailua-Kona Public Library

9. Studies

The Review Commission authorized the preparation of one study. This study was undertaken to ensure that the work of the Review Commission would be comprehensive in scope.

The study, prepared by Nell Cammack with the assistance of Karen Essene, is entitled "Study of Laws, Administrative Rules, and Regulations Relating to the Protection, Regulation, and Management of Water Resources in Hawaii." The purpose of the study was to summarize and index the key provisions of all laws,

rules, and regulations relating to water resources and to identify gaps, ambiguities, and overlapping responsibilities that relate to the protection, regulation, and management of water resources in Hawaii at both the state and county levels.

10. Identification of major issues

At its regular meetings of October 27 and November 3, 1994, the Review Commission agreed on a list of 20 major issues for further discussion. The 20 major issues, which were presented in the Review Commission's Interim Report of December 15, 1994, include:

- (1) Purpose of the State Water Code,
- (2) Designation/nondesignation,
- (3) Overall administrative structure,
- (4) Planning,
- (5) Fact finding/data analysis,
- (6) Water quality/quantity integration,
- (7) Watershed management/surface water,
- (8) Priorities of rights/uses,
- (9) Dispute resolution,
- (10) Hawaiian water rights,
- (11) Water-following-land-use, question,
- (12) Permitting process,
- (13) Out-of-watershed transfers,
- (14) Trust/ownership issues,
- (15) Interagency coordination,
- (16) Conservation,
- (17) Alternative resource development,
- (18) Definitions,
- (19) Technical changes, and
- (20) Scope of code.

11. Workshop and public hearing on Hawaiian water rights

The Review Commission organized a workshop on Hawaiian water rights, which was held on January 26, 1994, in order to (a) gain a better understanding of Hawaiian water rights as they are set forth in current State law and (b) consider ways in which those rights should be legally protected and practically implemented. A call for technical papers on the implementation of Hawaiian water rights was sent to all persons on the mailing list. The workshop enabled the Review Commission to receive technical input on three questions:

(1) How should current State law, including Section 221 of the Hawaiian Homes Commission Act, the State Water Code, the Administrative Rules of the State Water Code, and Act 325 of 1991, be implemented or amended to protect water supplies for homestead development?

(2) How should current State law, including the State Water Code and the Administrative Rules of the

State Water Code, be implemented or amended to protect Hawaii's streams to allow Native Hawaiians to gather from streams for subsistence, cultural, and religious purposes?

(3) How should current State law, including the State Water Code and the Administrative Rules of the State Water code, be implemented or amended to protect appurtenant water rights to ensure the productive cultivation of kuleana and taro lands?

Technical papers were submitted by:

- ▶ Prof. Jon M. Van Dyke, "The Protection and Implementation of Native Hawaiian Water Rights"; for the Office of Hawaiian Affairs
- ▶ Charley Ice, "Implementation of Hawaiian Water Rights"
- ▶ National Park Service, "The Implementation of Hawaiian Water Rights"
- ▶ Carl C. Christensen, "Unresolved Issues Relating to Water Rights Held by the Department of Hawaiian Home Lands under Federal and State Law"; Native Hawaiian Legal Corporation
- ▶ David Penn, "First-Step Implementation of Hawaiian Water Rights Using the Half-Half Principle to Level the Playing Field"
- ▶ Native Hawaiian Advisory Council, "Community Based Planning for Implementation of Hawaiian Water Rights"
- ▶ Benjamin Kudo and Christine Low, "Technical Paper on the Implementation of Hawaiian Water Rights"; for the Land Use Research Foundation
- ▶ Catherine Vandemoer, "Implementing Native Hawaiian Water Rights"
- ▶ George Cooper and Eugene Dashiell, "Legal History and Definitions of Appurtenant Water Rights in Hawaii"

On February 23, 1994, the Review Commission held a public hearing on the implementation of Hawaiian water rights. At the public hearing, 20 members of the public presented testimony on the above three questions. (See Appendix D for a list of all persons who provided testimony at the public hearing.)

12. External review of final draft of proposed amendments to improve the State Water Code

Following completion of the Final Draft of October 26, 1994, the Review Commission sent out copies to approximately 120 persons who (1) either work in government agencies that are responsible for regulating or managing water in Hawaii or (2) submitted written testimony at a public hearing on the Review Commission's 82 proposed changes to improve the State Water Code. The second group includes residents from private corporations, community groups, special-interest groups, and all counties.

The external review elicited comments from 31 persons and organizations. (See Appendix D for a list of persons and organizations that participated in the external review by submitting written comments.)

13. Finances

The Legislature appropriated the following sums to defray the expenses of the Review Commission:

1. For FY 1992-1993	\$100,000
2. For FY 1993-1994	100,000
3. For FY 1994-1995	<u>155,000</u>
Total	\$355,000

The Review Commission's finances are administered by the Legislative Reference Bureau, which provides the Review Commission with quarterly statements of expenditures.

Expenditures made to December 31, 1994, by categories, are:

1. Expenditure of funds

appropriated for

FY 1992-1993:

July 1, 1992—June 30, 1993

\$100,000

Personal services \$ 3,003.41

Services on a fee basis¹ 85,173.14

Other current expenditures² 6,258.82

Furniture and equipment 5,564.63

100,000

Balance

-0-

¹\$50,450.73 encumbered as of June 30, 1993

²\$101.04 encumbered as of June 30, 1993

2. Expenditure of funds

appropriated for

FY 1993-1994:

July 1, 1993—June 30, 1994

\$100,000

Office supplies \$ 2,508.12

Printing and binding 5,020.68

Advertising 10,114.92

Car mileage (includes parking) 300.00

Intrastate transportation 4,260.89

Intrastate subsistence 10,746.29

Hire of passenger cars 1,011.95

Other travel 66.21

Services on a fee basis³ 61,052.35

Other current expenditures 4,208.15

Equipment 710.44

\$100,000

Balance

-0-

³\$6,333.84 encumbered as of June 30, 1994

Note: \$8,532.85 encumbered as of June 30, 1994, for other operating expenses

3. Expenditure of funds

appropriated for

FY 1994-1995:

July 1, 1994—June 30, 1995

\$155,000.00

Personal services \$ 7,600.00

Office supplies 288.99

Car mileage (includes parking) 253.18

Intrastate transportation 2,168.95

Intrastate subsistence 7,138.49

Hire of passenger cars 1,046.36

Other travel 53.04

Services on fee basis 37,895.28

Other current expenditures 1,446.13

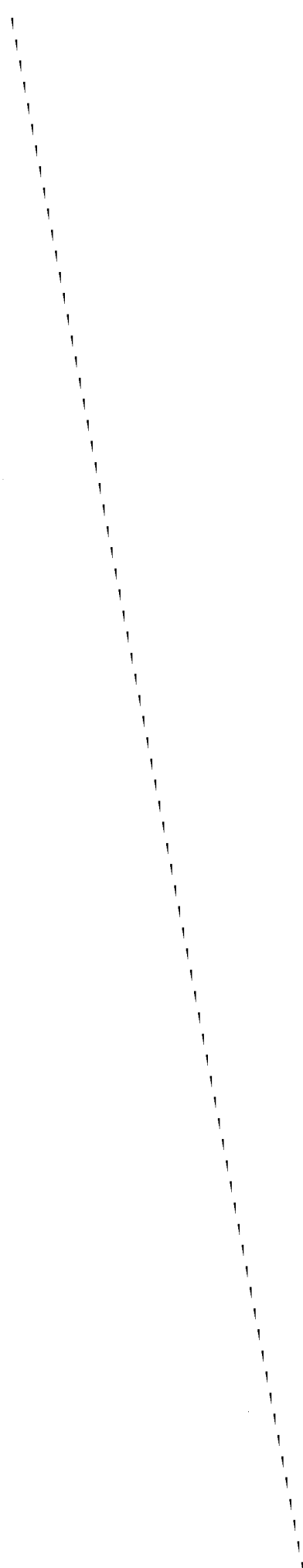
57,890.42

Balance

\$ 97,109.58

Even though the Review Commission will remain in existence for one year after the submittal of its final report, it will not request an appropriation for FY 1995-1996.

10/10/10



APPENDIX A

Section 5, Act 45, Session Laws of Hawaii 1987

SECTION 5. (a) There is established within the legislative reference bureau for administrative purposes a review commission on the state water code consisting of seven members appointed by the president of the senate and the speaker of the house of representatives. The review commission shall be directly accountable to the legislature. The review commission shall perform a comprehensive review of the state water code and the development of recommendations for its improvement. The review shall include, but not be limited to, the following: (1) all water issues addressed in the state water code; (2) other water matters of fundamental importance which should be dealt with in a state water code, but which have not yet been incorporated, such as the identification and definition of public and private rights to waters, the institution of a comprehensive statewide permit system to regulate all types and uses of water, the integration of water quality and water quantity matters for a unified management of the resource by a single lead agency; and (3) the appropriate agencies of the state and county levels responsible for protecting, developing, and controlling water, their aims and objectives, the necessary powers to be conferred upon them, and their organizational support.

(b) The review commission shall begin its review work five years following the passage of a state water code by the legislature and shall complete its work within a period of two years, culminating in a report of its findings and recommendations to the legislature. The review commission shall cease to exist one year after the submittal of the report.

APPENDIX B

REPORT TITLE:

State Water Code

DESCRIPTION:

Amends the state water code to implement the recommendations of the review commission on the state water code, including the following: (1) extends the designation of water management areas to include the entire State; (2) phases in water use permitting; (3) strengthens implementation of native Hawaiian water rights; (4) adds a new part relating to a hierarchy of uses; (5) adds five new components to the Hawaii water plan; (6) reorganizes stream protection and management; and (7) reorganizes the administrative structure of the commission on water resources management by attaching the commission to the department of land and natural resources for administrative purposes only. Makes conforming amendments to other HRS sections. Appropriates funds to the commission, the counties, and the departments of agriculture, health, and Hawaiian home lands.

NO.

EIGHTEENTH LEGISLATURE, 1995
STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO THE STATE WATER CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Eight years after the enactment of the state
2 water code, the legislature finds that amendments to the state
3 water code are necessary to enable the commission on water
4 resource management (CWRM) more effectively to carry out its
5 mandate under Article XI, section 7 of the State Constitution,
6 to: "set overall water conservation, quality and use policies;
7 define beneficial and reasonable uses; protect ground and surface
8 water resources, watersheds and natural stream environments;
9 establish criteria for water use priorities while assuring
10 appurtenant rights and existing correlative and riparian uses and
11 establish procedures for regulating all uses of Hawaii's water
12 resources."

13 SECTION 2. Chapter 174C, Hawaii Revised Statutes, is
14 amended as follows:

15 1. By amending part I to read:

16 "PART I. ADMINISTRATIVE STRUCTURE

17 [[§174C-1]] Short title. This chapter shall be known and
18 may be cited as the State Water Code.

19 [[§174C-2]] Declaration of policy. (a) It is recognized

NO.

1 that the waters of the State are held in public trust for the
2 benefit of the citizens of the State. It is declared that the
3 people of the State are beneficiaries and have a right to have
4 the waters protected for their use. The state water code shall
5 be interpreted and applied to obtain maximum reasonable-
6 beneficial use or reuse of the waters of the State, while
7 providing for a balance of ecological, cultural, and consumptive
8 uses. It is further declared that the primary responsibility for
9 protecting and managing the waters lies with the State.

10 (b) [There is a need for a program of comprehensive water
11 resources planning to address the problems of supply and
12 conservation of water. The state water use and protection plan,
13 with such future amendments, supplements, and additions as may be
14 necessary, is accepted as the guide for developing and
15 implementing this policy.] It is declared that a comprehensive,
16 statewide permit system regulating all types and uses of water
17 will better enable the State to protect and manage the resource.
18 The former system of designating some parts of the State as water
19 management areas, where water use permits are required, while
20 leaving other parts of the State largely unregulated, will be
21 phased out, and the new system bringing the water resources of
22 the entire State within a unified statewide permit system will be

NO.

1 phased in.

2 (c) It is the policy of the State to improve and integrate
3 water resources planning efforts and to develop a comprehensive
4 statewide water plan to address such problems as the supply and
5 conservation of water. The Hawaii water plan under part A, with
6 such future amendments, supplements, and additions as may be
7 incorporated, shall guide the development and implementation of
8 this policy.

9 [(c) The state water code shall be liberally interpreted to
10 obtain maximum beneficial use of the waters of the State for
11 purposes such as domestic uses, aquaculture uses, irrigation and
12 other agricultural uses, power development, and commercial and
13 industrial uses. However, adequate provision shall be made for
14 the protection of traditional and customary Hawaiian rights, the
15 protection and procreation of fish and wildlife, the maintenance
16 of proper ecological balance and scenic beauty, and the
17 preservation and enhancement of waters of the State for municipal
18 uses, public recreation, public water supply, agriculture, and
19 navigation. Such objectives are declared to be in the public
20 interest.]

21 (d) The state water code shall be liberally interpreted and
22 applied to protect and improve the quality of waters of the State

NO.

1 and to provide that no substance be discharged into such waters
2 without first receiving the necessary treatment or other
3 corrective action. The people of Hawaii have a substantial
4 interest in the prevention, abatement, and control of both new
5 and existing water pollution and in the maintenance of high
6 standards of water quality.

7 (e) The state water code shall be liberally interpreted and
8 applied [in a manner which conforms with] to support the
9 intentions and plans of the counties in terms of land use
10 planning.

11 [[§174C-3]] Definitions. As used in this chapter, unless
12 the context otherwise requires:

13 "Agricultural use" means the care and production of
14 livestock, livestock products, poultry, poultry products, or the
15 planting, cultivating, and harvesting of crops or trees, or the
16 farming or ranching of any plant or animal species in a
17 controlled salt, brackish, or freshwater environment.

18 ["Authorized planned use" means the use or projected use of
19 water by a development that has received the proper state land
20 use designation and county development plan/community plan
21 approvals.

22 "Board" means the board of land and natural resources.]

NO.

1 "Appurtenant right" means the right to use water in
2 connection with a particular parcel of land in a quantity and
3 flow not exceeding that which was actually used to cultivate taro
4 and other traditional products at the time of the Mahele. This
5 use shall be interpreted to be consistent with the common law of
6 the State.

7 "Aquifer" means any subsurface geologic formation that has
8 the ability to receive, store, and transmit water.

9 "Chairperson" means the chairperson of the commission on
10 water resource management.

11 "Change in use" means [any modification or change in water
12 use from or to domestic, municipal, military, agriculture
13 (including agricultural processing), or industrial uses.]:

14 (1) A change in location or place of use;

15 (2) A change in class of water use such as domestic,
16 municipal, military, agriculture, golf course, or
17 industrial; or

18 (3) An increase in the average annual amount of water being
19 used beyond the amount specified by the commission in
20 the water-use permit.

21 "Channel alteration" means:

22 (1) [to] To obstruct, diminish, destroy, modify, or

NO.

1 relocate a stream channel;

2 (2) [to] To change the direction of flow of water in a
3 stream channel;

4 (3) [to] To place any material or structures in a stream
5 channel; [and]

6 (4) [to] To remove any material or structures from a stream
7 channel[.]; or

8 (5) Any combination of the foregoing.

9 "Coastal waters" means all waters surrounding the islands of
10 the State from the coast of any island to a point three miles
11 seaward of the coast and, in the case of streams, rivers, and
12 drainage ditches, to a point three miles seaward from their point
13 of discharge into the sea and includes those brackish waters,
14 fresh waters, and salt waters that are subject to the ebb and
15 flow of the tide.

16 "Commission" means the commission on water resource
17 management.

18 ["Continuous flowing water" means a sufficient flow of water
19 that could provide for migration and movement of fish, and
20 includes those reaches of streams which, in their natural state,
21 normally go dry seasonally at the location of the proposed
22 alteration.

NO.

1 "Department" means the department of land and natural
2 resources.]

3 "Correlative use" means the use of a reasonable and fair
4 share of the groundwater available from a parcel of land, without
5 undue interference with the rights or property of another. This
6 use shall be interpreted to be consistent with the common law of
7 the State.

8 "Domestic use" means any use of water for individual
9 personal needs and for household purposes such as drinking,
10 bathing, heating, cooking, noncommercial gardening, and
11 sanitation.

12 "Emergency" means [the absence of a sufficient] a situation
13 where the quantity [and] or quality of water [in any area whether
14 designated or not which] threatens the public health, safety,
15 [and] or welfare as determined by the commission.

16 "Estimated sustainable yield" means an estimated maximum
17 rate at which water may be withdrawn, in the commission's
18 determination, from a water source without impairing its utility
19 or quality, where the commission determines that lack of adequate
20 data makes sustainable yield figures unreliable.

21 "Existing correlative use" means a correlative use existing
22 on and continuing since November 7, 1978.

NO.

1 "Existing riparian use" means a riparian use existing on and
2 continuing since November 7, 1978.

3 "Exploratory well" means an excavation or artificial opening
4 into the ground, or an enlargement of a natural opening, made for
5 testing or exploratory purposes such as locating groundwater,
6 determining the practicability of withdrawing water from the
7 opening made, or estimating the water's depth, quantity, or
8 quality.

9 ["Ground water"] "Groundwater" means any water found beneath
10 the surface of the earth, whether in perched supply, dike-
11 confined, flowing, or percolating in underground channels or
12 streams, under artesian pressure or not, or otherwise.

13 "Hydrologic unit" means a surface drainage area or a [ground
14 water] groundwater basin or a combination of the two[.], or a
15 portion thereof, where the unit is suitable for planning
16 purposes.

17 "Impoundment" means any [lake, reservoir, pond, or other]
18 artificial containment of surface water occupying a bed or
19 depression in the earth's surface [and having a discernible
20 shoreline].

21 "Instream flow standard" means a quantity or flow of water
22 or depth of water which is required to be present at a specific

NO.

1 location in a stream system at certain specified times of the
2 year to protect fishery, wildlife, recreational, aesthetic,
3 scenic, and other beneficial instream uses.

4 "Instream use" means [beneficial uses] a use of stream water
5 [for significant purposes which are located in the stream and
6 which are] achieved by leaving the water strictly in the stream.
7 [Instream uses include, but are not limited to:

- 8 (1) Maintenance of fish and wildlife habitats;
- 9 (2) Outdoor recreational activities;
- 10 (3) Maintenance of ecosystems such as estuaries, wetlands,
11 and stream vegetation;
- 12 (4) Aesthetic values such as waterfalls and scenic
13 waterways;
- 14 (5) Navigation;
- 15 (6) Instream hydropower generation;
- 16 (7) Maintenance of water quality;
- 17 (8) The conveyance of irrigation and domestic water
18 supplies to downstream points of diversion; and
- 19 (9) The protection of traditional and customary Hawaiian
20 rights.]

21 "Interim instream flow standard" means a temporary instream
22 flow standard of immediate applicability, adopted by the

NO.

1 commission without the necessity of a public hearing, and
2 terminating upon the establishment of an instream flow standard.

3 "Municipal use" means the domestic, industrial, and
4 commercial use of water through public services available to
5 persons of a county for the promotion and protection of their
6 health, comfort, and safety, for the protection of property from
7 fire, and for the purposes listed under the term "domestic use".

8 "Nonconforming use" means a provisional use that is
9 scheduled for reduction, modification, or phase-out, under
10 section 174C-S.

11 "Noninstream use" means the use of stream water that is
12 diverted or removed from its stream channel and includes the use
13 of stream water outside of the channel for domestic,
14 agricultural, [and] aquacultural, or industrial purposes.

15 ["Nonregulated use" means any use of water which is exempted
16 from regulation by the provisions of this code.]

17 "Person" means any and all persons, natural or artificial,
18 including an individual, firm, association, organization,
19 partnership, business trust, corporation, company, the United
20 States of America, the State of Hawaii, and all political
21 subdivisions, municipalities, and public agencies thereof.

22 "Preexisting water use" means a use of water occurring in a

NO.

1 geographic area on the date when the geographic area is phased
2 into the statewide water-use permit system under part IV, or a
3 use of water within certain classes of use occurring on the date
4 when such classes are phased into the statewide system.

5 "Provisional use" means a lower priority water use limiting
6 the availability of water for a higher priority reserved water
7 use, under sections 174C-L, 174C-S, and 174C-54.

8 "Reasonable-beneficial use" means the use of water in such a
9 quantity as is necessary for economic and efficient utilization,
10 for a purpose, and in a manner which is both reasonable and
11 consistent with the state and county land use plans and the
12 public interest.

13 "Riparian use" means the reasonable use of water from a
14 natural watercourse adjoining a parcel of land and used in
15 connection with that parcel; provided that the use does not
16 materially diminish the quantity or flow for downstream users.
17 This use shall be interpreted to be consistent with the common
18 law of the State.

19 "Stream" means any natural watercourse such as a river,
20 creek, or slough[, or natural watercourse] in which water
21 [usually] flows perennially or intermittently in a defined bed or
22 channel[. It is not essential that the flowing be uniform or

1 uninterrupted. The fact that] and which provides an opportunity
2 for migration or movement of aquatic life or for other instream
3 uses of water, regardless of whether some parts of the bed or
4 channel have been dredged [or improved does not prevent the
5 watercourse from being a stream.], modified, or realigned.

6 "Stream channel" means [a natural or artificial watercourse
7 with a definite] the bed and banks [which periodically or
8 continuously contains flowing water. The channel referred to is
9 that which] of a stream, as it exists at the present time,
10 regardless of where [the channel] it may have been located [at
11 any time] in the past.

12 "Stream diversion" means the act of removing water from a
13 stream into a channel, pipeline, auwai, ditch, or other
14 conduit[.] for noninstream use purposes.

15 "Stream reach" means a segment of a stream channel having a
16 defined upstream and downstream point.

17 "Stream system" means the aggregate of water features
18 comprising or associated with a stream, including the stream
19 itself and its tributaries, its watershed, headwaters, ponds,
20 wetlands, [and estuary.] estuaries, and coastal reaches.

21 "Surface water" means both contained surface water--that is,
22 water upon the surface of the earth in bounds created naturally

NO.

1 or artificially, including[, but not limited to,] streams, other
2 watercourses, lakes, reservoirs, and coastal waters subject to
3 state jurisdiction--and diffused surface water--that is, water
4 occurring upon the surface of the ground other than in contained
5 water bodies. [Water from natural springs is] Spring water
6 becomes surface water [when] once it exits from the [spring]
7 ground onto the earth's surface[.] or into a surface body of
8 water.

9 "Sustainable yield" means the maximum rate at which water
10 may be withdrawn from a water source without impairing the
11 utility or quality of the water source as determined by the
12 commission.

13 "Time of withdrawal or diversion" means, in view of the
14 nature, manner, and purposes of a reasonable and beneficial use
15 of water, the most accurate method of describing the time when
16 the water is withdrawn or diverted, including description in
17 terms of hours, days, weeks, months, or physical, operational, or
18 other conditions.

19 "Water" or "waters of the State" means any and all water,
20 whether fresh, brackish, or saltwater, or reclaimed wastewater,
21 on or beneath the surface of the ground, including natural or
22 artificial watercourses, streams, auwai, estuaries, lakes, ponds,

NO.

1 fish ponds, or diffused surface water and water percolating,
2 standing, or flowing beneath the surface of the ground[.],
3 coastal water where used for desalination, and atmospheric water.

4 "Watercourse" means a stream [and] or any canal, ditch, or
5 other artificial watercourse in which water [usually] flows in a
6 defined bed or channel. It is not essential that the flowing be
7 uniform or uninterrupted.

8 "Water management area", "designated area", or "designated
9 water management area" means a geographic area [which has been]
10 designated [pursuant to section 174C-41] before July 1, 1995, as
11 requiring management of the ground or surface water resource, or
12 both[.]; or a geographic area designated on or after July 1,
13 1995, as having been phased into the statewide water-use permit
14 system.

15 "Watershed" means those lands that capture and transmit
16 water to streams and that induce percolation to replenish
17 aquifers.

18 "Water source" [means a place within or from which water is
19 or may be developed, including but not limited to: (1)
20 generally, an] includes:

21 (1) An area such as a watershed defined by topographic
22 boundaries[, or a];

NO.

(2) A definitive [ground water] groundwater body; [and (2) specifically, a particular]

(3) A stream, other surface water body, spring, tunnel, or well or [related] combination thereof[.];

(4) Other places from which water may be taken;

(5) Reclaimed wastewater; and

(6) Desalinated water.

"Well" means [an artificial excavation or opening into the ground, or an artificial enlargement of a natural opening by which ground water is drawn or is or may be used or can be made to be usable to supply reasonable and beneficial uses within the State.] a bored, drilled, or driven shaft, or a dug hole, the depth of which is greater than its widest surface dimension, and by which groundwater is or may be drawn for any use.

[[§174C-4]] Scope. (a) All waters of the State, including leased and licensed waters, are subject to regulation under [the provisions of] this chapter unless specifically exempted. [No provision of this chapter shall apply to coastal waters. Nothing in this chapter to the contrary shall restrict the planning or zoning power of any county under chapter 46.]

(b) No state or county government agency may enforce any statute, rule, or order affecting the waters of the State

NO.

1 controlled under [the provisions of] this chapter, whether
2 enacted or [promulgated] adopted before or after July 1, 1987,
3 inconsistent with [the provisions of] this chapter. Nothing in
4 this chapter to the contrary shall restrict the power of any
5 county to plan or zone as provided in chapter 46.

6 (c) No state or county government agency or other person
7 having the power of eminent domain or condemnation under the laws
8 of the State, may exercise the power with respect to condemning
9 property if the condemnation will materially affect water
10 resources in the State, without the written permission of the
11 commission.

12 (d) No right, title, or interest in the use of any water
13 resources of the State can be acquired by prescription.

14 §174C-5 General powers and duties. The general
15 administration of the state water code shall rest with the
16 commission on water resource management[. In addition to its
17 other powers and duties, the commission:], which:

18 (1) Shall [carry out topographic surveys, research, and
19 investigations into all aspects of water use and water
20 quality.] be the lead agency in working with the
21 departments of health, land and natural resources,
22 Hawaiian home lands, and agriculture, and with

NO.

1 appropriate federal, state, and county agencies, to
2 enter into memoranda of understanding that identify
3 each agency's specific role and responsibilities for
4 implementing the mandates of this chapter and that
5 integrate the administration of programs affecting
6 coastal waters; and may invite or request private
7 organizations to be active participants in this process
8 and to enter into similar memoranda of understanding;

9 (2) Shall [designate water management areas for] extend
10 regulation of water uses to include both ground and
11 surface water uses and to include all geographic areas
12 in the State, under the terms of this chapter [where
13 the commission, after the research and investigations
14 mentioned in paragraph (1), shall consult with the
15 appropriate county council and county water agency, and
16 after public hearing and published notice, finds that
17 the water resources of the areas are being threatened
18 by existing or proposed withdrawals of water.], thereby
19 phasing in a statewide water-use permit system;

20 (3) Shall administer the water permit system, including
21 permits for water use, stream channel alteration,
22 stream diversion works, well construction, exploratory

NO.

1 wells, and pump installation;

2 (4) May delegate authority for permit issuance and other
3 authority to county agencies at their request, under
4 the terms of this chapter, while retaining authority to
5 rescind or modify any such delegation;

6 [(3)] (5) Shall establish an instream use protection program
7 designed to protect, enhance, [and] reestablish, [where
8 practicable,] and restore beneficial instream uses of
9 water in the State[.];

10 [(4)] (6) May contract and cooperate with [the various
11 agencies of the federal government and with state and
12 local administrative and] governmental [agencies] and
13 nongovernmental entities or with private [persons.]
14 persons;

15 [(5)] (7) May enter, after obtaining the consent of the
16 property owner, at all reasonable times upon any
17 property other than dwelling places for the purposes of
18 conducting investigations and studies, or enforcing any
19 [of the provisions] provision of this code, being
20 liable, however, for actual damage done. If consent
21 cannot be obtained, reasonable notice shall be given
22 prior to entry[.], except in an emergency;

NO.

1 [(6) Shall cooperate with federal agencies, other state
2 agencies, county or other local governmental
3 organizations, and all other public and private
4 agencies created for the purpose of utilizing and
5 conserving the waters of the State, and assist such
6 organizations and agencies in coordinating the use of
7 their facilities and participate in the exchange of
8 ideas, knowledge, and data with such organizations and
9 agencies. For this purpose the commission shall]

10 (8) Shall maintain an advisory staff of experts[.] and
11 shall carry out topographic surveys, water research,
12 and water-related investigations as needed;

13 [(7) Shall prepare, publish, and issue such printed
14 pamphlets and bulletins as the commission deems
15 necessary for the dissemination of information to the
16 public concerning its activities.]

17 (9) Shall develop educational programs and materials
18 promoting water conservation and explaining the state
19 water code and its administrative rules; and shall
20 educate the community about water issues and promote
21 community participation, by methods the commission
22 deems appropriate, such as forming voluntary advisory

NO.

1 groups on all islands, which may include neighborhood
2 boards or community associations;

3 [(8)] (10) May appoint and remove agents and employees
4 including hearings officers, specialists, and
5 consultants necessary to carry out the purposes of this
6 chapter [and may be engaged by the commission] without
7 regard to the requirements of chapters 76 and 77 and
8 section 78-1[.];

9 [(9)] (11) May acquire, lease, and dispose of such real and
10 personal property as may be necessary in the
11 performance of its functions, including the acquisition
12 of real property for the purpose of conserving and
13 protecting water and water related resources as
14 provided in section 174C-14[.];

15 [(10)] (12) Shall identify, by continuing study, those areas
16 of the State where [salt water] saltwater intrusion is
17 a threat to [fresh water] freshwater resources and
18 report its findings to the appropriate county mayor and
19 council and the public[.];

20 [(11)] (13) Shall provide such coordination, cooperation, or
21 approval necessary to the effectuation of any plan or
22 project of the federal government in connection with or

NO.

1 concerning the waters of the State. The commission
2 shall approve or disapprove such federal plans or
3 projects on behalf of the State. No other agency or
4 department of the State shall assume the duties
5 delegated to the commission under this paragraph,
6 except that [the]:

7 (A) The department of health shall continue to
8 exercise such powers vested in it with respect to
9 water quality[,]; and [except that the]

10 (B) The [department of business, economic development,
11 and tourism] office of state planning shall
12 continue to [carry out its duties and
13 responsibilities under chapter 205A.] exercise
14 such powers vested in it with respect to planning;

15 [(12) Plan] (14) Shall plan and coordinate programs for the
16 development, conservation, protection, control, and
17 regulation of water resources based upon the best
18 available information, and in cooperation with federal
19 agencies, other state agencies, county or other local
20 governmental organizations, and other public and
21 private agencies created for the utilization and
22 conservation of water[.];

NO.

1 (15) Shall seek, wherever possible, a diversity of
2 scientific views on issues of hydrology, water quality,
3 and other areas of scientific concern to the
4 commission; and

5 [(13)] (16) Shall catalog and maintain an inventory of all
6 water uses and water resources[.], including those in
7 part B.

8 §174C-6 [Deputy to the chairperson of the commission on
9 water resource management.] Executive director. (a) There shall
10 be [a first deputy] an executive director to [the chairperson of]
11 the commission [on water resource management ("deputy for water
12 resource management") who shall be in addition to any other first
13 deputy to the chairperson as the chairperson of the board of land
14 and natural resources. The deputy shall have], who shall have
15 substantial experience in the area of water [resources and]
16 resource management. The executive director shall be appointed
17 by [the chairperson with the approval of a majority of] the
18 commission.

19 (b) The duties of the [deputy for water resource
20 management] executive director shall be to administer and
21 implement, under the direction of the commission, the state water
22 code [and all], the rules, and [other] directives [promulgated in

NO.

1 accordance therewith] adopted by the commission. Nothing in this
2 [provision] section shall be construed as limiting the authority
3 of the commission as to matters regarding water resources.

4 (c) The position of [deputy for water resource management]
5 the executive director is not subject to chapters 76 and 77.

6 (d) The salary of the [deputy for water resource
7 management] executive director shall be as provided in section
8 26-53 for first deputies or first assistants to the head of any
9 department.

10 §174C-A Special assistant for native Hawaiian rights. (a)
11 The commission staff shall include a special assistant for native
12 Hawaiian rights, whose primary duty is to ensure that rights of
13 native Hawaiians set forth in part IX are duly addressed.

14 (b) The special assistant's other duties shall include:

15 (1) Working with the department of Hawaiian home lands and
16 the office of Hawaiian affairs in preparing the
17 Hawaiian home lands water plan and the native Hawaiian
18 water plan, under part A.

19 (2) Being the liaison for and maintaining lines of
20 communication with the office of Hawaiian affairs, the
21 department of Hawaiian home lands, and the Hawaiian
22 community.

NO.

1 (3) Such other duties as may be appropriate.

2 (c) The special assistant shall be compensated at the level
3 of a branch chief.

4 [[§174C-7]] Commission on water resource management. (a)

5 There is established [within the department] a commission on
6 water resource management consisting of [six] nine members
7 [which], including at least one member from each county and a
8 representative from the Hawaiian community. The commission shall
9 have exclusive jurisdiction and final authority in all matters
10 relating to implementation and administration of the state water
11 code, except as otherwise specifically provided in this chapter.
12 The commission shall be attached to the department of land and
13 natural resources for administrative purposes only.

14 (b) [Four] Seven members shall be appointed by the governor
15 subject to confirmation by the senate, in [a] the manner
16 prescribed in subsection [(d).] (e). Each [member] of these
17 members shall have substantial experience [in the area of water
18 resource management.] related to the study, conservation, or
19 management of water, but shall not be affiliated with a purveyor
20 of water. Each of these members shall be eligible to serve as
21 chairperson of the commission upon election by a majority of the
22 commission members.

NO.

1 (c) The chairperson of the board of land and natural
2 resources [shall be the chairperson of the commission. The] and
3 the director of health or the director's designee shall serve as
4 [an] ex officio voting [member.] members, but shall be ineligible
5 to serve as chairperson of the commission.

6 [(c)] (d) The members of the commission shall serve without
7 compensation but shall be reimbursed for expenses, including
8 travel expenses, necessary for the performance of their duties.

9 [(d)] (e) In appointing a member to the commission, the
10 governor shall select from a list submitted by a nominating
11 committee. The nominating committee shall be composed of four
12 individuals chosen as follows: two persons appointed by the
13 governor; one person appointed by the president of the senate;
14 and one person appointed by the speaker of the house[.] of
15 representatives. The nominating committee shall solicit
16 applications from the general public and from the persons and
17 organizations on the list maintained by the commission for
18 mailing notices. For each open position, the nominating
19 committee shall send to the governor the names of at least three
20 individuals [for each open position.] with substantial experience
21 related to the study, conservation, or management of water.

22 [(e)] (f) Except as otherwise provided in this chapter, the

NO.

1 commission shall be subject to sections 26-34, 26-35, and 26-36.

2 [[§174C-8]] Adoption of rules [concerning water resources
3 by the commission]. The commission shall adopt and enforce such
4 rules as may be necessary or convenient to administer this
5 chapter. [The initial set of rules, subject to later amendment,
6 revisions, or additions, shall be adopted no later than two years
7 after July 1, 1987. Rules shall be adopted] Whenever the
8 commission adopts rules, it shall do so in conformity with
9 chapter 91.

10 [[§174C-9]] Proceedings before the commission [concerning
11 water resources]. All proceedings before the commission
12 concerning the enforcement or application of any provision of
13 this chapter or any rule adopted pursuant thereto, or the
14 commission's issuance, modification, or revocation of any permit
15 [or license under this code by the commission,] regarding any
16 water use, shall be conducted in accordance with chapter 91.
17 Hearings regarding particular water resources shall be conducted
18 on the island where those water resources are located.

19 [[§174C-10]] Dispute resolution and citizen
20 complaints. (a) The commission shall have jurisdiction
21 statewide to hear and resolve any dispute or complaint regarding
22 water resource protection, water permits, [or] constitutionally

NO.

1 protected water interests, or [where there is insufficient water
2 to meet] competing needs for water[, whether or not the area
3 involved has been designated as a water management area under
4 this chapter]. The final decision on [any matter] these matters
5 shall be made by the commission.

6 (b) To handle citizen complaints and requests for dispute
7 resolution, the commission shall adopt procedural rules to handle
8 these matters efficiently and effectively, encouraging the
9 parties to use mediation or other forms of alternative dispute
10 resolution wherever appropriate.

11 (c) The commission shall accept requests for dispute
12 resolution and citizen complaints alleging that a person is:

13 (1) Wasting or polluting water;

14 (2) Making an instream use of water that is harmful;

15 (3) Improperly making a diversion, withdrawal, release,
16 transport, impoundment, or consumptive use of waters;

17 (4) Violating a permit condition or an order of the
18 commission; or

19 (5) Engaged in any activity without a permit where a permit
20 is required under this chapter.

21 (d) Upon receiving such a request or complaint, the
22 commission shall notify the person whose conduct is the subject

NO.

1 of the complaint, cause an investigation to be made, take
2 appropriate action, and inform all parties or persons involved of
3 the outcome, decision, or result.

4 (e) To investigate any complaint, the commission may:

5 (1) Convene hearings;

6 (2) Appoint investigators to gather evidence pertinent to
7 the complaint or enforcement of the commission's
8 orders;

9 (3) Issue subpoenas to compel the appearance of witnesses
10 and the production of documents, files, and data in any
11 form, including electronic data files; and

12 (4) Enter upon property to inspect, record, or otherwise
13 gather information relevant to the complaint filed.

14 (f) To enforce its decisions and orders, the commission
15 may:

16 (1) Convene hearings;

17 (2) Order the reduction, modification, redirection, or
18 cessation of water use or other activity affecting the
19 quantity and quality of water being used;

20 (3) Assess costs against parties determined to be in
21 violation of its decisions and orders; and

22 (4) Impose penalties as provided for in this part.

NO.

1 (g) After conducting an investigation under subsections (d)
 2 and (e), if the commission finds there is probable cause to
 3 believe that a right or use assured by this chapter will be
 4 diminished by the disputed activity, the commission may:

5 (1) Issue an order to show cause why the disputed activity
 6 should not be prohibited by order of the commission;

7 (2) Schedule a hearing to determine the form and extent of
 8 the order needed to terminate the disputed activity
 9 causing the harm, as appropriate to the circumstances.

10 (h) The commission shall take appropriate steps to ensure
 11 that investigators assigned to handle disputes and citizen
 12 complaints are sufficiently separated from and independent of the
 13 commission so that its decisions are, and are seen to be,
 14 impartially rendered.

15 [[§174C-11]] Hearings officers. (a) The chairperson may
 16 appoint hearings officers, not subject to chapters 76 and 77, to
 17 hear and reach a preliminary decision on any matter concerning
 18 the implementation or administration of the state water code
 19 which the commission may refer to the hearings officers by rule
 20 or otherwise.

21 (b) In assigning matters to hearings officers, the
 22 chairperson shall make the assignments in a manner which ensures

NO.

1 that hearings officers will develop familiarity and expertise
2 with given geographic areas.

3 (c) In conducting a hearing on any matter referred by the
4 commission, a hearings officer shall solicit and consider the
5 views of the appropriate state and county officials responsible
6 for planning, economic development, and resource management and
7 such other county officials and others as the commission shall
8 direct. Any affected county agency shall be admitted as a party
9 upon request.

10 (d) Each hearings officer is deemed to be an agent of the
11 commission with all powers associated with [such] that
12 designation.

13 [(e) In order to facilitate dispute resolution, the
14 commission may employ mediation methods where practicable
15 including the use of masters.

16 (f) The commission shall adjudicate disputes where there is
17 insufficient water to meet competing needs.]

18 §174C-B Standing to file objections. (a) The following
19 persons shall have standing to file objections to a permit
20 application under this chapter and may appear as parties at any
21 contested case hearing on the application:

22 (1) Persons who have some property interest in any land

NO.

1 served by the aquifer or served by or adjacent to any
2 stream or stream system that will be affected by the
3 application;

4 (2) Persons whose traditional and customary Hawaiian
5 practices will be diminished by the application;

6 (3) Beneficiaries of the Hawaiian Homes Commission Act of
7 1920, as amended, if their interests will be affected
8 by the application; and

9 (4) Persons who will be directly and immediately affected
10 by the water use proposed in the application.

11 (b) Persons who claim standing under subsection (a) shall
12 notify the commission, state the basis claimed for standing, and
13 provide an explanation where standing is not apparent.

14 (c) The commission shall provide notice and an opportunity
15 to be heard before denying a standing claim under subsection (a).

16 §174C-C1 Public notice of permit applications. (a) The
17 commission shall adopt rules establishing procedures for
18 notifying the public of permit applications filed under this
19 chapter.

20 (b) For applications for water-use permits, the
21 notification procedure shall include:

22 (1) Having a notice published weekly for two consecutive

NO.

1 weeks in a newspaper of general circulation within the
2 affected county;

3 (2) Sending a notice to persons and community groups who
4 have filed a written request for notification of any
5 pending applications affecting particular geographic
6 areas;

7 (3) Notifying the mayor, council, and water board of the
8 affected county;

9 (4) Maintaining and making available to the public, upon
10 request, a compilation of all pending applications; and

11 (5) Using electronic means of notification as deemed
12 appropriate by the commission.

13 (c) For all other types of permit applications, the
14 notification procedure need not include newspaper publication but
15 shall include the other methods in subsection (b).

16 (d) The notice and compilation of pending applications
17 shall include with respect to each applicant for each permit:

18 (1) Applicant's name and address;

19 (2) Date of filing;

20 (3) Date set for a hearing, if any;

21 (4) Source of the water supply;

22 (5) Quantity of water requested, where applicable;

NO.

1 (6) Use to be made of the water and limitations, if any;

2 (7) Place of use;

3 (8) Location of well point or diversion; and

4 (9) Other specifications as established by the commission
5 by rule.

6 (e) The notice shall state that written objections to the
7 permit application may be filed with the commission by a
8 specified date and shall explain the rules of standing and the
9 procedure and deadline for asserting standing. The commission
10 shall establish by rule the time limits within which objections
11 must be filed. The commission, at its discretion, may request
12 further information from either applicant or objectors, and a
13 reasonable time shall be allowed for such responses. Each
14 applicant shall be notified by the commission of the objections
15 filed to an application.

16 §174C-C2 Hearings on permit applications and petitions to
17 modify instream flow standards. (a) The commission shall adopt
18 rules establishing hearing procedures for permit applications
19 under this chapter and for petitions to modify an instream flow
20 standard.

21 (b) For applications for water-use permits, except as
22 provided in subsection (d), and for petitions to modify any

NO.

1 instream flow standard, the following steps shall be included:

2 (1) The commission shall hold a public hearing to allow
3 various points of view to be heard and, whenever
4 possible, to allow the parties or persons involved to
5 work out a mutually agreeable solution; the commission
6 shall keep a record of the names and addresses of the
7 participants.

8 (2) When the commission's staff issues a recommendation on
9 the application or petition, copies shall be mailed to
10 the applicant or petitioner and the participants, along
11 with a notice explaining the rules of standing and the
12 procedure and deadline for asserting standing.

13 (3) Within thirty days after the staff recommendation is
14 mailed as required in paragraph (2), the application or
15 petitioner, a participant who has standing, or any
16 other person who has standing may request a contested
17 case hearing.

18 (4) If no one with standing requests a contested case
19 hearing, the commission shall meet and issue its
20 decision and mail copies to the applicant or petitioner
21 and the participants; within ten days after the
22 decision is mailed, the applicant or petitioner or

NO.

1 other person with standing may file a written request
2 for a contested case; provided that the person is on
3 the record as a participant.

4 (5) If no one with standing requests a contested case
5 hearing, the commission's decision is final, and
6 judicial review may be sought in the circuit courts.

7 (6) If a contested case hearing is requested by a person
8 with standing, the commission shall so notify the
9 applicant or petitioner and the participants and shall
10 explain the procedure by which others may seek to
11 assert standing for the contested case.

12 (7) After a contested case hearing is held:

13 (A) The commission shall issue its findings and
14 decision and shall mail a copy to the parties
15 within thirty days after the decision is mailed;
16 and

17 (B) An aggrieved party may file a notice of a direct
18 appeal to the supreme court.

19 (c) For permit applications other than water-use permits,
20 the commission shall adopt rules itemizing those types or classes
21 of permit applications to be processed administratively, those to
22 be decided by the commission without a hearing, and those

NO.

1 requiring a hearing.

2 (d) For water-use permit applications for a quantity of
3 water not exceeding a threshold quantity established by the
4 commission by rule, the commission may establish an expedited
5 procedure for the chairperson to approve or deny the
6 applications; provided that the commission may adopt different
7 threshold quantities as may be appropriate for different
8 geographic areas. For all permit applications, the commission
9 may adopt rules identifying classes or threshold levels of use
10 with minimal impact on the biological, chemical, and physical
11 integrity of the water resource and may employ the expedited
12 procedure for such applications.

13 (e) For permit applications for which there is no hearing,
14 the commission shall adopt, by rule, a hearing procedure for
15 reconsideration of its action on such an application if requested
16 by:

17 (1) The applicant within thirty days after the notice of
18 denial is mailed; or
19 (2) An objector within thirty days after commission action
20 on the application; provided that the objector has
21 standing.

22 Failure to seek reconsideration shall not be a bar to judicial

NO.

1 review where otherwise available.

2 [[§174C-12]] Judicial review of rules and orders of the
3 commission concerning the water code. Judicial review of rules
4 and orders of the commission under this chapter shall be governed
5 by chapter 91.] (a) Final decisions or orders of the commission
6 in the following types of cases may be appealed directly to the
7 supreme court under section 91-14(b):

8 (1) A contested case under this chapter;

9 (2) A case where the commission denies a person the right
10 to participate in a contested case hearing; or

11 (3) A case declaring or interpreting the meaning or
12 applicability of any provision of this chapter or any
13 rule adopted under this chapter.

14 (b) Judicial review of any other order or decision of the
15 commission may only be sought in the circuit courts and shall be
16 governed by chapter 91.

17 (c) Trial de novo is not allowed on review of commission
18 actions under this chapter.

19 [[§174C-13] Citizen complaints. The commission shall
20 adopt, pursuant to chapter 91, procedural rules for the
21 processing of citizen complaints including the right of appeal to
22 the commission. If any person files a complaint with the

NO.

1 commission that any other person is wasting or polluting water or
2 is making a diversion, withdrawal, impoundment, consumptive use
3 of waters or any other activity occurring within or outside of a
4 water management area, not expressly exempted under this code,
5 without a permit where one is required, the commission shall
6 cause an investigation to be made, take appropriate action, and
7 notify the complainant thereof.]

8 \$174C-D Fees. The commission shall adopt a schedule of
9 application and permit fees. The fees shall be used to defray
10 administrative costs of the permit system established under this
11 chapter. A public agency shall not be subject to payment of
12 fees.

13 ~~[[\$174C-14]]~~ Acquisition of real property. (a) The
14 legislature declares it to be necessary for the public health and
15 welfare that water and water related resources be conserved and
16 protected. The acquisition of real property for this objective
17 shall constitute a public purpose for which public funds may be
18 expended.

19 (b) The commission may acquire real property and easements
20 by purchase, gift, devise, lease, eminent domain, or otherwise
21 for flood control, water management, or water and water-related
22 resource conservation.

NO.

1 (c) Land, water areas, and related resources which may be
2 acquired for this purpose include, but are not limited to,
3 streams and other watercourses, parks and recreation areas,
4 beaches, submerged lands, and other open areas, as well as
5 necessary access sites and rights-of-way.

6 (d) This section does not limit the exercise of similar
7 powers delegated by statute to any state or local government
8 agency. This section is not intended to limit, in any way, the
9 powers of the commission in regards to the acquisition of real
10 property under any other statute.

11 §174C-E Permit revocation. (a) Any permit issued under
12 this chapter is subject to possible revocation, after notice and
13 a hearing, for any of the following reasons:

14 (1) A materially false statement in a permit application or
15 in any report or statement of fact required under this
16 chapter;

17 (2) Material change of circumstances or conditions since
18 the permit was issued;

19 (3) A reckless, knowing, or intentional violation of a
20 material permit condition;

21 (4) A knowing or intentional violation of a material
22 provision of this chapter, or rule adopted pursuant

NO.

1 thereto; or
2 (5) Partial or total nonuse, for reasons other than
3 conservation, of the water allowed by the permit for
4 four or more continuous years, excluding periods of
5 nonuse caused by a declaration of water shortage under
6 part IV, except in situations covered by rules
7 governing cases of extreme hardship, factors beyond the
8 user's control, or the like.

9 (b) The commission may cancel a permit, permanently and in
10 whole, with the written consent of the permittee.

11 [[§174C-15]] Penalties and common law remedies. (a) The
12 commission may enforce its rules and orders adopted pursuant to
13 this chapter by suit for injunction or for damages or both.

14 (b) Any person who violates [any] a material provision of
15 this chapter or rule adopted pursuant thereto, or violates a
16 material permit condition or an order of the commission, may be
17 subject to a fine imposed by the commission. [Such] For a
18 negligent violation, the fine shall not exceed \$1,000. For a
19 reckless, knowing, or intentional violation, the fine shall not
20 exceed \$25,000. For a continuing offense, each day during which
21 the offense is committed is a separate violation. Any action
22 taken to impose or collect any penalty provided for in this

NO.

1 section shall be considered an administrative action. The
2 commission shall retain the fines to help defray its
3 administrative and enforcement costs.

4 (c) No provision of this chapter shall bar the right of any
5 injured person to seek other legal or equitable relief against a
6 violator of this chapter.

7 [[§174C-16]] Severability. If any provision of this
8 chapter or the application thereof to any person or circumstance
9 is held invalid, this invalidity does not affect other provisions
10 or applications of the chapter which can be given effect without
11 the invalid provision or application, and to this end the
12 provisions of this chapter are severable."

13 2. By repealing parts II and III.

14 3. By adding two new parts to be appropriately designated
15 and to read:

16 "PART A. HAWAII WATER PLAN

17 §174C-F Planning goals. Planning for the State's water
18 resources shall be directed toward achievement of the following
19 goals:

20 (1) Conservation, management, and protection of the water
21 resource of the State;

22 (2) Assurance of reasonable-beneficial uses of the waters

NO.

1 of the State, consistent with part B;

2 (3) Protection of constitutionally assured water rights and
3 uses;

4 (4) Use and reuse of the waters of the State for such
5 public purposes as navigation, drainage, sanitation,
6 flood control, public recreation, and the procreation
7 of fish and other wildlife;

8 (5) Attainment of water quality, consonant with state and
9 federal water quality standards;

10 (6) Coordination of water planning at both state and county
11 levels; and

12 (7) Integration of the plan components into a document that
13 is readily usable by the public.

14 §174C-G Planning data. (a) To address the need for an
15 appropriate data base for planning and for decision-making in the
16 permit process, the commission shall:

17 (1) Inventory the State's existing water resources, along
18 with the best estimate of the reliability of the data
19 in each instance;

20 (2) Itemize and study the means and methods of conserving
21 and augmenting water resources in the State;

22 (3) Inventory existing water uses, including domestic,

NO.

1 municipal, industrial, agricultural and aquacultural
2 uses, and hydropower development, reuse, reclamation,
3 and recharge;

4 (4) Quantify the existing and contemplated needs and uses
5 of water of varying quality, such as water for
6 irrigation, power development, geothermal power, and
7 municipal uses, in light of state and county land use
8 plans and policies and the effects on the environment,
9 including procreation of fish and wildlife;

10 (5) Identify wild and scenic river systems to be accorded
11 special protection as part of a public trust to
12 preserve rivers or streams, or portions thereof, having
13 high natural quality or unusual scenic value, including
14 those within the system of natural area reserves. The
15 commission shall report its findings under this
16 paragraph to the legislature twenty days before the
17 convening of each regular legislative session;

18 (6) Review existing and contemplated programs for
19 conservation and watershed protection;

20 (7) Study drainage, reclamation, flood hazards, floodplain
21 zoning, dam safety, selection of reservoir sites, and
22 other matters affecting water quantity or quality or

NO.

- 1 affecting conservation of water; and
- 2 (8) Quantify water for the four types of reserved uses of
- 3 stream water and the four types of reserved uses of
- 4 groundwater in the hierarchies in part B.
- 5 (b) To conduct these inventories and analyses, the
- 6 commission, where appropriate, shall work with the counties and
- 7 the departments of health, land and natural resources, Hawaiian
- 8 home lands, and agriculture, under the memoranda of understanding
- 9 in section 174C-5(1).
- 10 (c) The commission shall provide a copy of these studies to
- 11 the counties and agencies involved in preparing the Hawaii water
- 12 plan and shall keep a copy of each study available for public
- 13 inspection.
- 14 §174C-H Components of the Hawaii water plan. (a) The
- 15 Hawaii water plan shall consist of one component comprised of
- 16 county plans and eight other components. The nine types of
- 17 components are:
- 18 (1) A water resource protection plan, which shall be
- 19 prepared by the commission to set the standards for the
- 20 protection of the resource and to identify potential
- 21 conflicts among the other components of the Hawaii
- 22 water plan, and which shall include the water shortage

NO.

1 plan in part IV;

2 (2) County water use and development plans, which shall be
3 prepared by each county and adopted by ordinance,
4 consistent with each county's land use plan and
5 policies, with its general plan and zoning, and with
6 state land use classifications and policies;

7 (3) The water quality plan, which shall be prepared by the
8 department of health;

9 (4) A state water projects plan, which shall be prepared by
10 the agency having jurisdiction over such projects, in
11 conjunction with other state agencies;

12 (5) An agricultural water plan, which shall be prepared by
13 the department of agriculture to quantify the long-term
14 water needs of agriculture, including those for
15 important agricultural lands, small farmers, taro
16 growers, and others engaged in diversified agriculture;

17 (6) A Hawaiian home lands water plan, which shall be
18 prepared by the department of Hawaiian home lands, in
19 consultation with its beneficiaries, to quantify the
20 water needed for current and foreseeable developments
21 of that department;

22 (7) A native Hawaiian water plan, which the commission

NO.

1 shall request the office of Hawaiian affairs to
2 prepare, quantifying the water needed by owners of
3 kuleana and taro lands with appurtenant water rights
4 and the water needed to maintain adequate stream flow
5 for traditional and customary rights such as gathering
6 of hihiwai, opae, and o'opu;

7 (8) Federal/military water plans, which the commission
8 shall request from the various federal agencies with
9 jurisdiction over federal lands located within the
10 State, to quantify the current and foreseeable water
11 needs of those agencies; and

12 (9) A data needs plan, which shall be prepared by the
13 commission, in consultation with the counties and
14 appropriate agencies, to classify the reliability of
15 the principal data used in the Hawaii water plan, to
16 identify missing data, to devise strategies for
17 developing or improving such data, and to set
18 priorities for improving data, consistent with needs
19 and anticipated costs.

20 (b) The plan components shall be updated as necessary, and
21 the commission may prepare special plans addressing other needs
22 of critical concern to the commission.

NO.

1 (c) Wherever possible and appropriate, the plan components
2 shall:

3 (1) Include estimates of the reliability of data to
4 facilitate the data needs plan;

5 (2) Incorporate current and foreseeable development and
6 water needs of the department of Hawaiian home lands,
7 under sections 220 and 221 of the Hawaiian Homes
8 Commission Act;

9 (3) Conform to the water-use hierarchies in part B; and

10 (4) Identify potential and actual competing uses of water.

11 (d) The cost of restructuring the county water use and
12 development plans to conform to this chapter shall be funded by
13 the State in an amount not exceeding \$ per county.

14 Thereafter, the cost of periodic updates shall be borne by the
15 counties. State water capital improvement funds appropriated to
16 the counties shall be deemed to satisfy Article VIII, section 5
17 of the State Constitution.

18 §174C-I Planning guidelines. Planning guidelines shall be
19 decided as part of the memoranda of understanding in section
20 174C-5(1) or, if necessary, shall be decided by the commission
21 itself. The information in the plans may include:

22 (1) The nature and occurrence of water resources, with

NO.

1 estimates of reliability of data in each instance and
2 specific plans for acquiring better data;

3 (2) Hydrologic units and their characteristics, including
4 the quantity and quality of available resource;
5 sustainable yields and estimates of the reliability of
6 figures on sustainable yield; existing uses of water
7 and the quantity of water not presently used in the
8 hydrologic unit; requirements for beneficial instream
9 uses and environmental protection;

10 (3) Identification of certain water uses, within particular
11 sources of supply, that are undesirable uses for which
12 permits may be denied; or that are desirable uses
13 worthy of preservation by permit and to be preferred
14 over competing uses in part IV;

15 (4) Regional plans for water development;

16 (5) Plans for total water management, including
17 conservation, reclaimed wastewater, desalination, and
18 alternative resource development;

19 (6) Existing and contemplated uses of water and
20 corresponding impacts on the water resource;
21 foreseeable changes in water uses, land uses, or water
22 sources;

NO.

1 (7) Plans to conserve, augment, and protect the water
2 resource; and

3 (8) Identification of potential threats to water resources
4 and priority areas requiring more active management and
5 regulation.

6 §174C-J Certification of the plan components. The plan
7 components prepared by an agency other than the commission shall
8 be subject to the commission's certification that the component
9 meets planning guidelines agreed upon or set by the commission
10 under this part. Each county's water use and development plan
11 must be so certified for the county to remain eligible for state
12 appropriations for county water projects.

13 §174C-K Public hearings on the Hawaii water plan. Before
14 adopting a component of the Hawaii water plan, the agency that
15 prepared it shall provide at least thirty days' notice to the
16 public and hold appropriate public hearings on the islands where
17 the affected water resources are located, except for the county
18 water use and development plans adopted by county ordinance.

19 PART B. HIERARCHY OF WATER USES

20 §174C-L Use and effect of the hierarchies. (a) The
21 hierarchies of stream and groundwater uses set forth in this part
22 shall guide the commission in making permit decisions, resolving

NO.

1 disputes and citizen complaints, developing the Hawaii water
2 plan, and making allocation and reallocation decisions, including
3 modifications of existing permits.

4 **(b) Within the hierarchies, uses are listed in order of**
5 **priority. Where lower priority uses are limiting the water**
6 **available for reserved uses of higher priority, the commission**
7 **shall treat lower priority uses as provisional uses subject to**
8 **section 174C-S, even if the higher priority reserved uses were**
9 **not previously known or quantified. Water-use permits issued**
10 **under part IV shall be deemed contingent upon sufficient water**
11 **being available for higher priority reserved uses.**

12 **§174C-M Hierarchy of stream water uses. (a) The following**
13 **reserved uses in the hierarchy of stream water uses shall be**
14 **applicable to every stream in the State:**

15 **(1) A conservation reserve of stream water sufficient, in**
16 **the commission's determination, to protect the**
17 **biological, chemical, and physical integrity of the**
18 **stream; where practicable, to ensure propagation of**
19 **o'opu, opae, hihiwai, and other endemic species**
20 **dependent on streams; and, where consistent with those**
21 **conservation purposes, to allow for reasonable**
22 **nonconsumptive instream uses that are traditional and**

NO.

1 customary Hawaiian practices. These waters shall be
2 reserved from application. Any instream flow standard
3 or interim instream flow standard established under
4 part VI shall be regarded as part of this conservation
5 reserve;

6 (2) Stream waters and springs for the exercise of
7 appurtenant rights on the land to which the right
8 attaches; provided that:

9 (A) The commission has validated the appurtenant
10 rights claim under section 174C-0; and

11 (B) The water for a claimant of such an appurtenant
12 right shall be equitably apportioned if necessary
13 to accommodate every other claimant of a validated
14 appurtenant right as each becomes known;

15 (3) Stream waters reserved or claimed by the department of
16 Hawaiian home lands, under section 221 of the Hawaiian
17 Homes Commission Act of 1920, as amended, if confirmed
18 by the commission;

19 (4) Stream waters for existing riparian uses; and

20 (5) An agricultural reservation of stream water in an
21 amount and for a duration of time as petitioned for by
22 the department of agriculture for agricultural use and

NO.

1 approved by the commission by rule; provided that the
 2 reservation is consistent with a certified agricultural
 3 water plan under part A.

4 (b) The following nonreserved uses in the hierarchy of
 5 stream water uses shall apply to every stream in the State:

6 (1) Riparian uses not qualifying as existing riparian uses;

7 (2) Instream uses for cultural, scenic, and recreational
 8 purposes; and

9 (3) All other reasonable-beneficial surface water uses.

10 (c) All permits issued for surface water use shall be
 11 consistent with this part and shall be deemed subject to prior
 12 reserved uses in subsection (a).

13 §174C-N Hierarchy of groundwater uses. (a) The following
 14 reserved uses in the hierarchy of groundwater uses shall be
 15 applicable to every aquifer in the State:

16 (1) A conservation reserve of groundwater sufficient, in
 17 the commission's determination, to protect the
 18 biological, chemical, and physical integrity of the
 19 aquifer and its streams, stream systems, and springs,
 20 as determined by the commission to be physically
 21 dependent upon the aquifer. This water shall be
 22 reserved from allocation;

NO.

1 (2) Groundwaters reserved or claimed by the department of
2 Hawaiian home lands, under section 221 of the Hawaiian
3 Homes Commission Act of 1920, as amended, if confirmed
4 by the commission; and

5 (3) Existing correlative uses.

6 (b) The nonreserved uses in the hierarchy of groundwater
7 uses are any other reasonable-beneficial groundwater uses.

8 (c) Permits issued for groundwater use shall be consistent
9 with this part and shall be deemed subject to prior reserved uses
10 in subsection (a).

11 §174C-O Validation of appurtenant rights claim. The
12 commission, by rule, shall adopt procedures for the validation of
13 legitimate appurtenant rights claims.

14 §174C-P Preservation of rights. Appurtenant rights are
15 preserved and shall not be waived, forfeited, or abandoned for
16 lack of being asserted, used, known, or quantified.

17 §174C-Q Reservations of water. (a) The commission may
18 adjust the amount of water available to reserved or nonreserved
19 uses, as better data may become available to the commission, or
20 as may be required during a water shortage as provided in part
21 IV.

22 (b) The commission, by rule, may reserve water in such

NO.

1 locations, quantities, durations of time, or for such seasons of
2 the year as in its judgment may be necessary. The reservations
3 shall be subject to periodic review in the light of changed
4 conditions.

5 (c) To the extent the amount of water reserved or claimed
6 by the department of Hawaiian home lands for its beneficiaries is
7 inadequate, the beneficiaries shall have the right to petition
8 the commission for additional reservations under this part.

9 (d) Except for uses of water reserved and approved under
10 this part, no person may reserve water unless, in the judgment of
11 the commission, the person has a current use for the water.

12 §174C-R Remedies available. (a) No person may maintain an
13 action against a withdrawal or diversion, or may challenge a use
14 inconsistent with the hierarchies in this part, unless
15 deprivation of the person's own reasonable-beneficial use can be
16 shown.

17 (b) Nothing in this part shall impair the ability of any
18 person to petition the commission to adopt an interim instream
19 flow standard under part C, or to seek dispute resolution or file
20 a citizen complaint under part I.

21 §174C-S Provisional and nonconforming uses. (a) Upon its
22 own motion or upon application from an interested person or

NO.

1 party, the commission shall review provisional uses identified in
2 section 174C-L. After notice and a hearing, the commission shall
3 determine the extent and nature of the provisional use and the
4 higher priority reserved uses being harmed by the provisional use
5 and shall either:

6 (1) Issue a permit for the provisional use, for a specified
7 length of time, subject to appropriate conditions; or

8 (2) Declare the use to be nonconforming and establish a
9 plan for its reduction, modification, or phasing-out.

10 (b) Nonconforming uses declared as such in this section are
11 not illegal uses but may not be enlarged, altered, extended,
12 resumed if ceased, or restored if destroyed.

13 (c) When a water use has been declared nonconforming, a
14 change in use, as defined in section 174C-3, is not allowed
15 except with prior approval from the commission. An application
16 for a change in use may be approved by the commission, subject to
17 a plan of action to phase out the nonconforming use over a
18 reasonable period of time, but shall otherwise be denied.

19 Consideration may be given to estimates of reserved rights and
20 uses and foreseeable rights and uses as yet unclaimed.

21 (d) The commission may develop plans for trial reductions
22 in nonconforming uses over time, in accord with on-going studies

NO.

1 of stream diversion and aquifers, and may enter into agreements
2 with the nonconforming user to implement such plans.

3 (e) The commission shall adopt rules establishing
4 guidelines and standards to implement this section."

5 4. By amending parts IV and V to read:

6 "PART IV. REGULATION OF WATER USE

7 [[§174C-41] Designation of water management area. (a)

8 When it can be reasonably determined, after conducting scientific
9 investigations and research, that the water resources in an area
10 may be threatened by existing or proposed withdrawals or
11 diversions of water, the commission shall designate the area for
12 the purpose of establishing administrative control over the
13 withdrawals and diversions of ground and surface waters in the
14 area to ensure reasonable-beneficial use of the water resources
15 in the public interest.

16 (b) The designation of a water management area by the
17 commission may be initiated upon recommendation by the
18 chairperson or by written petition. It shall be the duty of the
19 chairperson to make recommendations when it is desirable or
20 necessary to designate an area and there is factual data for a
21 decision by the commission. The chairperson, after consultation
22 with the appropriate county mayor and county water board, shall

NO.

1 act upon the petition by making a recommendation for or against
2 the proposed designation to the commission within sixty days
3 after receipt of the petition or such additional time as may be
4 reasonably necessary to determine that there is factual data to
5 warrant the proposed designation.

6 (c) Designated ground water areas established under chapter
7 177, the Ground Water Use Act, and remaining in effect on July 1,
8 1987, shall continue as water management areas.

9 **[\$174C-42] Notice; public hearing required.** When a
10 recommendation for designation of a water management area has
11 been accepted, the commission shall hold a public hearing at a
12 location in the vicinity of the area proposed for designation and
13 publish a notice of the hearing setting forth: a description of
14 the land area proposed to be designated in terms of appropriate
15 legal subdivisions and tax map keys; the purpose of the public
16 hearing; and the time, date, and place of the public hearing
17 where written or oral testimony may be submitted and heard. The
18 notice shall be published once each week for three successive
19 weeks in a countywide newspaper of general circulation in the
20 appropriate county and the last publication shall be not less
21 than ten days nor more than thirty days before the date set for
22 the hearing. Publication of the notice of public hearing shall

NO.

1 be considered as sufficient notice to all landowners and water
2 users who might be affected by the proposed designation.

3 **[\$174C-43] Investigations required.** Before any proposed
4 water management area is designated by the commission, the
5 chairperson may conduct, cooperate with the appropriate federal
6 or county water agency in conducting, or administer contracts for
7 the conduct of, any scientific investigation or study deemed
8 necessary for the commission to make a decision to designate a
9 water management area.

10 In connection with such investigation or study, the
11 chairperson from time to time may require reports from water
12 users as to the amount of water being withdrawn and as to the
13 manner and extent of the beneficial use. Such reports shall be
14 made on forms furnished by the department.

15 **[\$174C-44] Ground water criteria for designation.** In
16 designating an area for water use regulation, the commission
17 shall consider the following:

18 (1) Whether an increase in water use or authorized planned
19 use may cause the maximum rate of withdrawal from the
20 ground water source to reach ninety per cent of the
21 sustainable yield of the proposed water management
22 area;

NO.

- 1 (2) There is an actual or threatened water quality
2 degradation as determined by the department of health;
- 3 (3) Whether regulation is necessary to preserve the
4 diminishing ground water supply for future needs, as
5 evidenced by excessively declining ground water levels;
- 6 (4) Whether the rates, times, spatial patterns, or depths
7 of existing withdrawals of ground water are endangering
8 the stability or optimum development of the ground
9 water body due to upcoming or encroachment of salt
10 water;
- 11 (5) Whether the chloride contents of existing wells are
12 increasing to levels which materially reduce the value
13 of their existing uses;
- 14 (6) Whether excessive preventable waste of water is
15 occurring;
- 16 (7) Serious disputes respecting the use of ground water
17 resources are occurring; or
- 18 (8) Whether water development projects that have received
19 any federal, state, or county approval may result, in
20 the opinion of the commission, in one of the above
21 conditions.

22 Notwithstanding an imminent designation of a water

NO.

1 management area conditioned on a rise in the rate of ground water
2 withdrawal to a level of ninety per cent of the area's
3 sustainable yield, the commission, when such level reaches the
4 eighty per cent level of the sustainable yield, may invite the
5 participation of water users in the affected area to an
6 informational hearing for the purposes of assessing the ground
7 water situation and devising mitigative measures.

8 [§174C-45] Surface water criteria for designation. In
9 designating an area for water use regulation, the commission
10 shall consider the following:

- 11 (1) Whether regulation is necessary to preserve the
12 diminishing surface water supply for future needs, as
13 evidenced by excessively declining surface water
14 levels, not related to rainfall variations, or
15 increasing or proposed diversions of surface waters to
16 levels which may detrimentally affect existing instream
17 uses or prior existing off stream uses;
- 18 (2) Whether the diversions of stream waters are reducing
19 the capacity of the stream to assimilate pollutants to
20 an extent which adversely affects public health or
21 existing instream uses; or
- 22 (3) Serious disputes respecting the use of surface water

NO.

1 resources are occurring.

2 **[\$174C-46] Findings of fact; decision of commission.** After
3 public hearing and any investigations deemed necessary have been
4 completed, the chairperson, after consultation with the
5 appropriate county council and county water board, shall make a
6 recommendation to the commission for decision. If the commission
7 decides to designate a water management area, it shall cause a
8 notice of its decision to be published in a newspaper of general
9 circulation in the appropriate county and when so published its
10 decision shall be final unless judicially appealed.

11 **[\$174C-47] Modifying and rescinding designated areas.** The
12 modification of the boundaries or the rescinding of existing
13 water management areas by the commission may be initiated by the
14 chairperson or by a petition to the commission by any person with
15 proper standing. The procedure for modifying the boundaries of
16 an existing water management area or for rescinding an existing
17 water management area shall be substantially similar to that for
18 the designation of a water management area.]

19 **\$174C-T Statewide water-use permit system. (a) Working in**
20 cooperation with the counties to be affected, the commission
21 shall extend the water-use permit system to regulate both ground
22 and surface water in all geographic areas of the State.

NO.

1 (b) By January 1, 1997, the commission shall adopt rules
2 establishing the sequence and timing for phasing in the water-use
3 permit system, as to geographic areas and classes or types of
4 water uses that remain unregulated on July 1, 1995, and
5 establishing the corresponding deadlines for filing applications
6 for preexisting uses of water. The rules may first phase in
7 areas of critical concern or areas where water disputes are
8 occurring, or may require water-use permits for all nonexempted
9 water uses in as yet unregulated geographic areas, or may
10 initially extend the water-use permit requirements to certain
11 uses, classes of use, or quantities of use; provided that all
12 nonexempted uses come within the water-use permit system. The
13 rules shall include a schedule for requiring permits for surface
14 water uses in groundwater management areas that were designated
15 before July 1, 1995.

16 (c) The commission shall hold appropriate informational
17 briefings on each island to explain the new requirements,
18 timetables, and deadlines.

19 §174C-U Exemptions from the permit system. The following
20 uses are exempt from the requirements of this part:

21 (1) Use of a catchment system;

22 (2) Domestic consumption of water by individual users; and

NO.

1 (3) Reasonable-beneficial instream uses.

2 [[§174C-48]] Permits required. (a) No [person shall
3 make any] withdrawal, diversion, impoundment, release, or
4 consumptive use of water [in any designated water management area
5 without first obtaining] may be made until the user obtains a
6 permit for that particular water use from the commission[.
7 However, no permit shall be required for domestic consumption of
8 water by individual users, and no permit shall be required for
9 the use of a catchment system to gather water. An existing],
10 unless the use is exempted.

11 (b) Absent an express prohibition in a water-use permit,
12 ground or surface water may be transported outside the watershed
13 from which it was taken.

14 (c) Any activity that might destroy any portion of a water
15 source or any activity that may harm the biological, chemical, or
16 physical integrity of a water resource is deemed to be a water
17 use requiring a permit from the commission, regardless of whether
18 the activity would occur in a geographic area that is not yet
19 phased into the permit system. No exemption shall ever apply to
20 such an activity.

21 (d) A preexisting water use in [newly designated areas] a
22 geographic area newly phased into the water-use permit system or

NO.

1 of a type or class newly phased into the system, other than an
2 activity described in subsection (c), may be continued until the
3 deadline lapses for filing applications for preexisting uses as
4 set by the rules phasing in the statewide water-use permit system
5 under this part; thereafter it may be continued only if a permit
6 application for the preexisting use has been filed under this
7 part, until such time as the commission has acted upon the
8 application [subject to compliance with section 174C-51.

9 (b) In its regulation of water resources in designated
10 water management areas, the].

11 §174C-V Delegation of authority over permits. (a) The
12 commission shall delegate to the county boards of water supply
13 the authority to allocate the use of water for municipal
14 purposes, subject to the limits of the water supply allocated to
15 the county boards of water supply in their role as water
16 purveyors.

17 (b) The commission may delegate some or all of its
18 authority under this part to a county agency, at the county
19 agency's request; provided that:

20 (1) The county agency is not a purveyor or developer of
21 water, except as provided for in subsection (a);

22 (2) The county agency has the necessary staffing, technical

NO.

expertise, and other resources to make sound and timely decisions;

(3) The commission retains oversight authority;

(4) Upon its own motion or upon application by a party or an interested person who sought party status, the commission may review any county decision on a permit application for compliance with this chapter and the rules adopted thereunder; and

(5) The commission develops guidelines for exercising its power to rescind or modify the delegation of authority to county agencies in an appropriate case.

§174C-49 [Conditions for a permit.] Permits for new uses.

(a) To obtain a permit [pursuant to this part,] for a proposed new use of water, the applicant shall establish that the [proposed use of water:] use:

(1) [Can be accommodated with the available water source;] Is consistent with the hierarchy of uses in part B;

(2) Is a reasonable-beneficial use as defined in section 174C-3;

(3) [Will not interfere with any existing legal use of water;] Is not inconsistent with the Hawaii water plan;

(4) [Is consistent with the public interest;] Will not

NO.

1 damage or waste the water resource; and

2 (5) [Is consistent with state and county general plans and
3 land use designations;] Reasonably complies with
4 appropriate water conservation practices.

5 [(6) Is consistent with county land use plans and policies;
6 and

7 (7) Will not interfere with the rights of the department of
8 Hawaiian home lands as provided in section 221 of the
9 Hawaiian Homes Commission Act.

10 (b) Within sixty days after receipt of a notice of a permit
11 application, the county shall inform the commission if the
12 proposed use is inconsistent with county land use plans and
13 policies.]

14 **(b) The counties shall have forty-five days after receiving**
15 **notice of a water-use permit application to inform the commission**
16 **whether the proposed use is inconsistent with county land use**
17 **plans and policies. If the county fails to respond within the**
18 **forty-five days, the commission may proceed to process the**
19 **application.**

20 (c) [The common law of the State to the contrary
21 notwithstanding, the commission shall allow the holder of a use
22 permit to transport and use surface or ground water beyond

NO.

1 overlying land or outside the watershed from which it is taken if
2 the commission determines that such transport and use are
3 consistent with the public interest and the general plans and
4 land use policies of the State and counties.] After public notice
5 and a hearing where required under part I, the commission shall
6 decide whether the proposed new use meets the criteria in
7 subsection (a). If so, the commission shall issue a permit for
8 the proposed new use, subject to possible further proceedings at
9 any time under part B.

10 (d) [The commission, by rule, may reserve water in such
11 locations and quantities and for such seasons of the year as in
12 its judgment may be necessary. Such reservations shall be
13 subject to periodic review and revision in the light of changed
14 conditions; provided that all presently existing legal uses of
15 water shall be protected.

16 (e)] All permits issued [by the commission] under this part
17 shall be subject to the rights of the department of Hawaiian home
18 lands [as provided in] under section 221 of the Hawaiian Homes
19 Commission Act[,] of 1920, as amended, as provided in part B,
20 whether or not the condition is explicitly stated in the permit.

21 [[§174C-50] Existing uses. (a) All existing uses of water
22 in a designated water management area, except those exempted from

NO.

1 regulation by this chapter, may be continued after July 1, 1987,
2 only with a permit issued in accordance with sections 174C-51,
3 174C-52, and 174C-53(b).

4 (b) After publication as provided in section 174C-52, the
5 commission shall issue a permit for the continuation of a use in
6 existence on July 1, 1987, if the criteria in subsection (a) are
7 met and the existing use is reasonable and beneficial.

8 Whether the existing use is a reasonable-beneficial use and
9 is allowable under the common law of the State shall be
10 determined by the commission after a hearing; provided that the
11 commission may make such a determination without a hearing, if
12 the quantity of water applied for does not exceed an amount per
13 month established by rule or if the quantity of water applied for
14 exceeds an amount per month established by rule, but no objection
15 to the application is filed by any person having standing to file
16 an objection. In determining whether an application does not
17 exceed the amount per month established by rule, the commission
18 shall consider an average of water use over the three-month
19 period immediately preceding the filing of the application.

20 (c) An application for a permit to continue an existing use
21 must be made within a period of one year from the effective date
22 of designation. Except for appurtenant rights, failure to apply

NO.

1 within this period creates a presumption of abandonment of the
2 use, and the user, if the user desires to revive the use, must
3 apply for a permit under section 174C-51. If the commission
4 determines that there is just cause for the failure to file, it
5 may allow a late filing. However, the commission may not allow a
6 late filing more than five years after the effective date of
7 rules implementing this chapter. The commission shall send two
8 notices, one of which shall be by registered mail, to existing
9 users to file for an application for a permit to continue an
10 existing use.

11 (d) An application shall be acted upon by the commission
12 within ninety calendar days of an application not requiring a
13 hearing, or within one hundred eighty calendar days of an
14 application requiring a hearing. The time periods prescribed in
15 this subsection shall not be deemed to run for any period in
16 which an application is not complete in all material respects in
17 the judgment of the board.

18 (e) The commission shall issue an interim permit; provided
19 that the existing use meets the conditions of subsection (b).
20 The commission shall also issue an interim permit for an
21 estimated, initial allocation of water if the quantity of water
22 consumed under the existing use is not immediately verifiable,

NO.

1 but the existing use otherwise meets the conditions of subsection
2 (b) for a permit or an interim permit. An interim permit is
3 valid for such time period specified therein. The commission may
4 issue successive interim permits of limited duration. Interim
5 permits are subject to revocation under section 174C-58.

6 Whenever interim permits are to be issued, the time periods
7 specified in subsection (d) apply to the issuance or nonissuance
8 of interim permits.

9 (f) A permit to continue an existing use shall be for a
10 quantity of water not exceeding that quantity being consumed
11 under the existing use. The quantity being consumed shall be
12 determined and verified by the best available means not unduly
13 burdensome on the applicant, as determined by the commission.
14 The commission may prescribe the installation of metering or
15 gauging devices, and, if so prescribed, such metering or gauging
16 devices shall be in place and operational for at least one year
17 before a determination is made as to the quantity of water being
18 consumed in an existing use and a final permit is issued.

19 (g) If an interim permit is issued pending verification of
20 the actual quantity of water being consumed under the existing
21 use, a final determination of that quantity shall be made within
22 five years of the filing of the application to continue the

NO.

1 existing use. In the final determination, the commission may
2 increase or reduce the amount initially granted the permittee.

3 (h) Two or more existing uses of water are deemed to be
4 competing when they draw water from the same hydrologically
5 controllable area and the aggregate quantity of water consumed by
6 the users exceeds the appropriate sustainable yield or instream
7 flow standards established pursuant to law for the area. If
8 applications are made to continue existing uses which are
9 competing and the uses otherwise meet the requirements of
10 subsection (b), the commission shall hold a hearing to determine
11 the quantity of water that may be consumed and the conditions to
12 be imposed on each existing use.

13 (i) A permit user of water with a continuous reduced water
14 usage shall be given priority to reobtain its permitted level of
15 water usage over any other application; provided that the use
16 remains the same and is reasonable and beneficial and water is
17 available.]

18 §174C-W Permits for preexisting uses. (a) Until the
19 deadline lapses for filing an application for a preexisting use,
20 as set by the rules phasing in the statewide water-use permit
21 system under this part, water users may apply for a permit under
22 this section to continue a preexisting water use, as defined in

NO.

1 section 174C-3. Once the deadline lapses, if no application has
2 been filed, the preexisting use shall be treated as a new water
3 use.

4 (b) An application for a permit to continue a preexisting
5 use may not exceed the preexisting quantity of water being
6 consumed, which shall be determined and verified by the best
7 available means not unduly burdensome to the applicant, in the
8 judgment of the commission.

9 (c) To obtain a permit for a preexisting use, the applicant
10 shall establish that the use is reasonable-beneficial and is
11 consistent with the hierarchy of uses in part B. After public
12 notice and a hearing where required under part I, the commission
13 shall decide whether the preexisting use is reasonable-beneficial
14 and whether the quantity can be verified. If so, the commission
15 shall issue a permit for the preexisting use, subject to possible
16 further proceedings at any time under part B.

17 **\$174C-X Interim permits.** (a) When an application for a
18 permit to continue a preexisting use meets all the requirements
19 except that the quantity of water being used is not immediately
20 verifiable, the commission may issue an interim permit, valid for
21 a limited period of time as shall be specified in the permit.
22 The commission may issue successive interim permits of limited

NO.

1 duration; provided that the aggregate time does not exceed five
2 years.

3 **(b)** As a condition of an interim permit, the commission may
4 require water meters or gauges to be installed and used for a
5 sufficient length of time to determine the quantity of water used
6 for the preexisting use.

7 **(c)** Once the quantity of water is verified, the user may
8 reapply for a permit to continue the preexisting use, if the
9 five-year limit has not yet lapsed; otherwise, the user may apply
10 for a permit for a new use.

11 **[[§174C-51]]** Application for a permit. All permit
12 applications filed under this part shall contain the following:

13 **(1)** The name and address of the applicant and landowner;
14 provided that:

15 **(A)** In the event the applicant or landowner is an
16 association, organization, partnership, trust,
17 corporation, or any other legal entity doing
18 business in Hawaii, the address of its principal
19 place of business in Hawaii shall be stated in the
20 application; and

21 **(B)** In the event a lessee, licensee, developer, or any
22 other person with a terminable interest or estate

NO.

1 in the land, which is the water source of the
2 permitted water, applies for a water permit, the
3 landowner shall also be stated as a joint
4 applicant for the water permit;

5 (2) The date of application;

6 (3) The water source of the water supply;

7 (4) The quantity of water requested;

8 (5) The use of the water and any limitations thereon;

9 (6) The location of the use of water;

10 (7) The location of the well or point of diversion; and

11 (8) Such other relevant information that the commission may
12 request from time to time.

13 The commission in its discretion may allow a person to apply for
14 several related withdrawals in the same application for a water
15 permit.

16 [[§174C-52] Notice. (a) Upon receipt of the application,
17 the commission shall cause a notice thereof to be published in a
18 newspaper having general circulation within the affected area.

19 The notice shall be published at least once a week for two
20 consecutive weeks. In addition, the commission shall cause a
21 copy of such notice to be sent to any person who has filed a
22 written request for notification of any pending applications

NO.

1 affecting a particular designated area and to the mayor and the
2 water board of the affected county. This notification shall be
3 sent by regular mail before the date of last publication. The
4 commission shall also make available to the public, upon request,
5 a monthly bulletin of all pending applications.

6 (b) The notice and the monthly bulletin shall contain the
7 name and address of the applicant; the date of filing; the date
8 set for a hearing, if any; the source of the water supply; the
9 quantity of water applied for; the use to be made of the water
10 and any limitations thereon; the place of the use; and the
11 location of the well point or diversion.

12 (c) The notice shall state that written objections to the
13 proposed permit may be filed with the commission by a specified
14 date. The commission shall establish by rules the time limits
15 within which objections must be filed. The commission, at its
16 discretion, may request further information from either applicant
17 or objectors, and a reasonable time shall be allowed for such
18 responses. Each applicant shall be notified by the commission of
19 the objections filed to an application.

20 [§174C-53] Permit issuance. [(a) The commission shall
21 determine, after a hearing, if required, whether the conditions
22 set forth in section 174C-49(a) have been established; provided

NO.

1 that the commission may make such determination without a hearing
2 if the quantity of water applied for does not exceed an average
3 amount per month to be established by rule or if the quantity of
4 water applied for exceeds an average amount per month to be
5 established by rule, but no objection to the application is filed
6 by any person having standing to file an objection.

7 (b) In acting upon any application, the commission need
8 consider only those objections filed by a person who has some
9 property interest in any land within the hydrologic unit from
10 which the water sought by the applicant is to be drawn or who
11 will be directly and immediately affected by the water use
12 proposed in the application. The commission shall adopt rules
13 governing the filing of objections and the persons having
14 standing to file objections.

15 (c) (a) An application under this part shall be acted upon
16 within ninety calendar days of an application not requiring a
17 hearing, or within one hundred eighty calendar days of an
18 application requiring a hearing[. The time periods prescribed in
19 this section shall not be deemed to run for any period in which
20 an], excluding days when the application is [not complete]
21 incomplete in [all] any material [respects,] respect, in the
22 judgment of the commission.

NO.

1 ~~[(d)]~~ (b) As a condition [for the issuance] of a permit the
2 commission may require [the permittee to install] installation of
3 water meters, gauges, or other appropriate measuring devices.

4 (c) The commission shall adopt, by rule, a list of
5 conditions that the commission may impose on permits and the
6 circumstances under which those conditions may be imposed.

7 ~~[[§174C-54]]~~ Competing applications. (a) If two or more
8 pending applications [which otherwise comply with section 174C-49
9 are pending for] meet the criteria for water-use permits in this
10 part, but, taken together, the applications would require a
11 quantity of water [that is inadequate for both or all,] in excess
12 of that available, or which for any other reason are in conflict,
13 the commission shall [first, seek] be guided by the hierarchy of
14 uses in part B and thus may:

15 (1) Grant the application for the higher priority water use
16 under the hierarchy; or, at the commission's
17 determination after a hearing, grant a fair portion of
18 the water requested by a higher priority user and
19 accommodate the lower priority user to some extent;

20 (2) Seek to allocate water in such a manner as to
21 accommodate [both] applications [if possible; second,
22 if mutual sharing is not possible, then the commission

NO.

1 shall approve] of equal priority under the hierarchy,
2 if possible;

3 (3) Otherwise, approve that application which best serves
4 the public interest.

5 (b) If there is insufficient water for a pending
6 application, and a previously issued permit for a lower priority
7 use is competing for water from the same source, then the
8 commission may grant the pending application, in which case the
9 procedures in section 174C-S regarding provisional uses shall be
10 invoked.

11 [[§174C-55]] Duration of permits. [Each] Unless revoked,
12 rescinded, modified, or expired, a permit for water use [in a
13 designated water management area] shall be valid until [the
14 designation of the water management area is rescinded, unless
15 revoked as provided in section 174C-58 or modified as provided in
16 section 174C-57.] there is a change in use since the issuance of
17 the permit.

18 [[§174C-56]] Review of permits. [At least once every
19 twenty years, the commission shall conduct a comprehensive study
20 of all permits issued under this chapter to determine whether the
21 conditions on such permits are being complied with. The
22 commission shall prepare a formal report to the legislature which

NO.

1 shall be available to the public.] Water-use permits may be
2 reviewed at any time to determine whether the actual use is the
3 use authorized in the permit, to manage the phasing-out of
4 nonconforming uses in part B, or to ensure reasonable compliance
5 with appropriate water conservation practices, and in any event
6 shall be reviewed not less than once every twenty years.

7 [[§174C-57]] Modification of permit terms. (a) A

8 permittee may seek modification of any term of a permit. A
9 permittee who seeks to change the use of water subject to the
10 permit, whether or not such change in use is of a material
11 nature, or to change the place of use of the water or to use a
12 greater quantity of water than allowed under the permit or to
13 make any change in respect to the water which may have a material
14 effect upon any person or upon the water resource, shall make
15 application pursuant to section 174C-51 in respect to such a
16 change. Modification of one aspect or condition of a permit may
17 be conditioned on the permittee's acceptance of changes in other
18 aspects of the permit.] Changes in water-use permits. (a) When
19 there is a change in use regarding a water-use permit, the user
20 shall file an application for a new use under this part. When
21 there is some other change, such as a reduction in water use, but
22 not a change in use, a new permit is not required, but the user

NO.

1 shall report the matter within ninety days to the commission for
2 its review and for any action that may be appropriate.

3 (b) [All permit modification applications shall be treated
4 as initial permit applications and be subject to sections 174C-51
5 to 174C-56; except that if the proposed modification] If the
6 change in use involves an increase in the quantity of water not
7 exceeding an average amount per month to be established by rule,
8 the commission, at its discretion, may approve the [proposed
9 modification] change in use without a hearing; provided that the
10 permittee establishes that:

11 (1) A change in conditions has resulted in the water
12 allowed under the permit becoming inadequate for the
13 permittee's needs; or

14 (2) The [proposed modification] change in use would result
15 in a more efficient utilization of water than is
16 possible under the existing permit.

17 (c) County agencies are exempt from the requirements of
18 this section except where the modification involves a change in
19 the quantity of water to be used or where the new use would
20 adversely affect the quality of the water or quantity of use of
21 another permittee.

22 (d) An application for a modification of the terms or

NO.

1 conditions of a permit shall be treated as an application for a
2 new use. Modification of one aspect or condition of a permit may
3 be conditioned on the permittee's acceptance of changes in other
4 aspects of the permit.

5 [[§174C-58] Revocation of permits. After a hearing, the
6 commission may suspend or revoke a permit for:

7 (1) Any materially false statement in the application for
8 the water permit, a modification of a permit term, or
9 any materially false statement in any report or
10 statement of fact required of the user pursuant to this
11 part.

12 (2) Any wilful violation of any condition of the permit.

13 (3) Any violation of any provision of this chapter.

14 (4) Partial or total nonuse, for reasons other than
15 conservation, of the water allowed by the permit for a
16 period of four continuous years or more. The
17 commission may permanently revoke the permit as to the
18 amount of water not in use unless the user can prove
19 that the user's nonuse was due to extreme hardship
20 caused by factors beyond the user's control. The
21 commission and the permittee may enter into a written
22 agreement that, for reasons satisfactory to the

NO.

1 commission, any period of nonuse may not apply towards
2 the four-year revocation period. Any period of nonuse
3 which is caused by a declaration of water shortage
4 pursuant to section 174C-62 shall not apply towards the
5 four-year period of forfeiture.

6 The commission may cancel a permit, permanently and in whole,
7 with the written consent of the permittee.]

8 [[]§174C-59[]] Transfer of permit. (a) A permit may be
9 transferred, in whole or in part, from the permittee to another,
10 if:

11 (1) [The conditions of use of the permit, including, but
12 not limited to, place, quantity, and purpose of the
13 use, remain the same;] There is no change in use; and
14 (2) The commission is [informed] given written notification
15 of the transfer within ninety days.

16 [Failure to inform the department of the transfer
17 invalidates the transfer and constitutes a ground for revocation
18 of the permit. A transfer which involves a change in any
19 condition of the permit, including a change in use covered in
20 section 174C-57, is also invalid and constitutes a ground for
21 revocation.]

22 (b) Transferring a permit without meeting the requirements

NO.

1 of subsection (a) invalidates the transfer and constitutes a
2 ground for revoking the permit.

3 [[§174C-60] Contested cases. Chapter 91 shall apply except
4 where it conflicts with this chapter. In such a case, this
5 chapter shall apply. Any other law to the contrary
6 notwithstanding, including chapter 91, any contested case hearing
7 under this section shall be appealed upon the record directly to
8 the supreme court for final decision.

9 [§174C-61] Fees. The commission shall promulgate a
10 schedule of application and permit fees. The fees shall be used
11 to defray the administrative costs of the permit systems
12 established under this chapter. A public agency shall not be
13 subject to the payment of any fees.]

14 [[§174C-62]] Declaration of water shortage. (a) The
15 commission shall formulate a plan for implementation during
16 periods of water shortage. As a part of the plan, the commission
17 shall adopt a reasonable system of permit classification
18 according to source of water supply, method of extraction or
19 diversion, use of water, or a combination thereof. This plan
20 shall be part of the Hawaii water plan in part A.

21 (b) The commission, by rule, may declare that a water
22 shortage exists within [all or part of an] any geographic area

NO.

1 when insufficient water is available to meet the requirements of
2 the permit system or when conditions are such as to require a
3 temporary reduction in total water use within the area to protect
4 water resources from serious harm. The commission shall publish
5 a set of criteria for determining when a water shortage exists.

6 (c) In accordance with the plan adopted under subsection
7 (a), the commission may impose such restrictions on one or more
8 classes of permits as may be necessary to protect the water
9 resources of the area from serious harm and to restore them to
10 their previous condition.

11 (d) A declaration of water shortage and any measures
12 adopted pursuant thereto may be rescinded by rule by the
13 commission.

14 (e) When a water shortage is declared, the commission shall
15 cause a notice thereof to be published in a prominent place in a
16 newspaper of general circulation throughout the area. The notice
17 shall be published each day for the first week of the shortage
18 and once a week thereafter until the declaration is rescinded.
19 Publication of [such] the notice shall serve as notice to all
20 water users in the area of the condition of water shortage.

21 (f) The commission shall cause each permittee in the water
22 shortage area to be notified by regular mail of any change in the

NO.

1 conditions of the permittee's permit, any suspension thereof, or
2 of any other restriction on the use of water for the duration of
3 the water shortage.

4 (g) If an emergency condition [arises due to] occurs
5 because of a water shortage [within] in any geographic area,
6 [whether within or outside of a water management area,] and if
7 the commission finds that the restrictions imposed under
8 subsection (c) are [not sufficient] insufficient to protect the
9 public health, safety, or welfare, or the health of animals,
10 fish, or aquatic life, or a public water supply, or recreational,
11 municipal, agricultural, or other reasonable uses, the commission
12 may issue orders reciting the existence of such an emergency and
13 requiring that such actions as the commission deems necessary to
14 meet the emergency be taken, including [but not limited to]
15 apportioning, rotating, limiting, or prohibiting the use of the
16 water resources of the area. Any [party] person to whom an
17 emergency order is directed may challenge such an order but shall
18 immediately comply with the order, pending disposition of the
19 [party's] challenge. The commission shall give precedence to a
20 hearing on [such] that challenge over all other pending matters.

21 [[§174C-63] Appurtenant rights. Appurtenant rights are
22 preserved. Nothing in this part shall be construed to deny the

NO.

1 exercise of an appurtenant right by the holder thereof at any
2 time. A permit for water use based on an existing appurtenant
3 right shall be issued upon application. Such permit shall be
4 subject to sections 174C-26 and 174C-27 and 174C-58 to 174C-62.]

5 PART V. WATER QUALITY

6 [[§174C-66]] Jurisdiction over water quality. The
7 department of health shall exercise [the] its powers [and duties
8 vested in it for] over the administration of the State's water
9 quality control program as provided by law.

10 [[§174C-67]] Exchange of information. (a) The
11 department of health shall submit to the commission such
12 information as the commission [shall] may require [as prescribed
13 in its rules, provided it does not] except where it may
14 jeopardize [any] a pending or ongoing enforcement action.

15 (b) The commission shall submit to the department of health
16 such information as the department [shall require, for the
17 performance of] may require to perform its water quality
18 functions.

19 [[§174C-68]] Water quality plan. (a) The department of
20 health shall formulate a [state] water quality plan for all
21 existing and potential sources of drinking water in the State and
22 [that plan shall become part of the Hawaii water plan described

NO.

1 in part III.] shall submit the plan to the commission to
2 determine whether it meets the planning guidelines agreed upon or
3 set by the commission under part A and, if so, to certify the
4 plan. Requirements for the plan shall be governed by [chapters]
5 chapter 340E [and 342. The state water quality plan shall
6 include water quality criteria for the designation of ground
7 water areas and surface water sources pursuant to section
8 174C-44].

9 (b) The [state] water quality plan shall be periodically
10 reviewed and revised by the department of health as needed.

11 (c) In formulating or revising the [state] water quality
12 plan, the department of health shall consult with and carefully
13 evaluate the recommendations of concerned federal, state, and
14 local agencies, particularly county water supply agencies.

15 (d) The department of health may ban the importation [into
16 this State of any substances which] of any substance into the
17 State where the department reasonably believes its importation
18 may present a danger to the water quality of [this] the State."

19 5. By repealing part VI.

20 6. By adding a new part to be appropriately designated and
21 to read:

22 "PART C. INSTREAM USES OF WATER

NO.

1 §174C-Y Protection of instream uses. (a) The commission
2 shall establish and administer a statewide instream use
3 protection program, in cooperation with appropriate agencies of
4 the federal, state, and county governments. The purpose of the
5 program is to protect, enhance, and reestablish, where
6 practicable, beneficial instream uses of water.

7 (b) The commission shall conduct investigations and collect
8 instream flow data on fishing, wildlife, aesthetic uses of
9 streams, recreational uses of streams, and water quality;
10 ecological information; and basic streamflow characteristics
11 necessary for determining instream flow requirements.

12 (c) The commission shall implement its instream flow
13 standards on any streams for which those standards have been
14 established under this part.

15 §174C-Z Periodic review of streams. (a) The commission
16 shall adopt, by rule, guidelines establishing a system of
17 periodic review of the streams in the State, on a stream-by-
18 stream basis to identify which streams need an instream flow
19 standard to protect the public interest in waters of the State.

20 (b) In the course of the periodic review, the commission
21 shall set forth in writing its conclusion that the public
22 interest does or does not require, as is appropriate, an instream

NO.

1 flow standard to be set for the stream, the findings in support,
2 and the basis for the findings.

3 (c) Before establishing or modifying an instream flow
4 standard, the commission shall provide public notice by
5 appropriate publication and shall notify the mayor, council, and
6 board of water supply of the affected county and persons who have
7 filed a written request to be notified.

8 §174C-AA Investigation and consultation. The commission,
9 or other agencies in participation with the commission, shall
10 investigate any stream under review. The commission shall
11 consult with and seek recommendations from the counties and other
12 agencies or persons having an interest in instream flow standards
13 and having pertinent information about the stream.

14 §174C-BB Public hearing. Before adopting, denying, or
15 modifying any instream flow standard, the commission shall give
16 notice and hold a hearing on its proposal.

17 §174C-CC Setting the instream flow standard. (a) Where
18 instream flow standards are needed, the commission shall
19 establish, by rule, such standards, expressed in terms of
20 variable flows of water necessary to provide adequate protection
21 of fish and other wildlife, recreational, aesthetic, scenic, or
22 other beneficial instream uses, in light of existing and

NO.

1 potential water developments including the economic impact of
2 restriction of such use.

3 **(b)** In formulating the proposed flow standard, the
4 commission shall balance the importance of present or potential
5 instream uses with the importance of present or potential
6 noninstream uses, including economic and noneconomic impacts of
7 both.

8 **(c)** Before deciding on an instream flow standard to
9 preserve, enhance, or restore instream values, the commission
10 shall consider the practicability of avoiding or minimizing the
11 impact on existing uses of the stream by physical solutions,
12 including water exchanges, modifications of project operations,
13 changes in points of diversion, changes in time and rate of
14 diversion, and water uses from alternative sources.

15 **§174C-DD. Petition or motion for interim standards.** **(a)**
16 Before a permanent instream flow standard has been established,
17 any person who uses the waters of a stream or has a valid
18 interest in a stream or its waters may petition the commission to
19 adopt or modify an interim instream flow standard for the stream
20 or streams. The petition shall include available data and
21 information on present or potential instream uses, the necessary
22 flow to assure those uses, and other relevant and reasonable

NO.

1 information required by the commission.

2 **(b) On its own motion, the commission may consider adopting**
3 **or modifying an interim instream flow standard to protect the**
4 **public interest.**

5 **§174C-EE Adopting or modifying interim standards. (a) In**
6 **considering a petition or its own motion to adopt or modify an**
7 **interim instream flow standard, the commission shall apply the**
8 **balancing test in section 174C-CC(b).**

9 **(b) The commission shall act upon a petition filed under**
10 **this part within one hundred eighty days after the petition is**
11 **filed or, at the request of the petitioner and subject to the**
12 **approval of the commission, within a longer period, but not to**
13 **exceed one year.**

14 **(c) Interim instream flow standards may apply to a single**
15 **stream or to all streams within a specified geographic area.**

16 **§174C-FF Termination of interim standard. (a) An interim**
17 **instream flow standard shall terminate with respect to any stream**
18 **when a permanent instream flow standard is established for that**
19 **stream.**

20 **§174C-GG Permits for stream channel alterations. (a) To**
21 **protect fish and other wildlife and to promote recreational,**
22 **aesthetic, scenic, and other beneficial instream uses, the**

NO.

1 commission shall protect stream channels from alterations
2 whenever practicable.

3 **(b) No stream channel alteration may be made by any person**
4 **until a permit has been obtained for such alteration from the**
5 **commission; provided that permits are not required for routine**
6 **maintenance of streambeds, drainageways, or existing facilities,**
7 **or for projects approved by the appropriate federal, state, or**
8 **county agency before July 1, 1987.**

9 **(c) After public notice and a hearing where required under**
10 **part I, the commission shall decide whether the proposed channel**
11 **alteration meets the criteria in this part and in the rules**
12 **adopted to implement this part. If so, the commission shall**
13 **issue the permit.**

14 **(d) Every permit for a stream channel alteration is deemed**
15 **subject to the condition that there is no vesting of rights to**
16 **use the stream water. Any such use requires a separate water-use**
17 **permit under part IV.**

18 **(e) The commission shall adopt rules, consistent with the**
19 **requirements of section 174C-93, for processing and considering**
20 **applications for stream channel alterations."**

21 7. By amending parts VII, VIII, and IX to read:

22 **"PART VII. WELLS**

NO.

1 [[§174C-81]] Definitions. As used in this part, unless
2 the context otherwise requires[, the terms]:

3 "Abandoned well" means any well that has been permanently
4 discontinued[. Any well shall be deemed abandoned which] or is
5 in such a state of disrepair that continued use for the purpose
6 of obtaining [ground water] groundwater is impractical.

7 "Exploratory well" has the same meaning as defined in
8 section 174C-3.

9 "Installation of pumps and pumping equipment" means the
10 procedure employed in the placement and preparation for operation
11 of pumps and pumping equipment, including all construction
12 involved in making entrance to the well, and establishing seals
13 and repairs to existing installations.

14 "Pump installation contractor" means any person, firm, or
15 corporation which is in the business of installing or repairing
16 pumps and pumping equipment.

17 "Pumps and pumping equipment" means any equipment or
18 materials utilized or intended for use in withdrawing or
19 obtaining [ground water.] groundwater. It includes seals, tanks,
20 fittings, and controls.

21 "Repairs" means any change, replacement, or other alteration
22 of any well, pump, or pumping equipment which requires a breaking

NO.

1 or opening of the well seal.

2 "Well" [shall be] has the same meaning as defined in section
3 174C-3.

4 "Well construction" means the producing of any well,
5 including the construction, alteration, or repair thereof, but
6 excluding the installation of pumps and pumping equipment.

7 "Well driller" means any person, firm, or corporation which
8 constructs, alters, or repairs wells.

9 "Well seal" means an approved arrangement or device used to
10 cap a well or to establish and maintain a junction between the
11 casing or curbing of a well and the piping or equipment installed
12 therein, the purpose or function of which is to prevent
13 pollutants from entering the [well at the other terminal.]
14 groundwater via the well.

15 [[§174C-82] Powers and duties of the commission. In
16 addition to its other powers and duties, the commission shall:

17 (1) Require registration of all existing wells, as provided
18 in section 174C-83;

19 (2) Require permits for well construction and for
20 installation of pumps and pumping equipment as provided
21 in section 174C-84;

22 (3) Require well completion reports, as provided in section

NO.

1 174C-85;

2 (4) Develop well construction and installation standards

3 for pumps and pumping equipment, as provided in section

4 174C-86; and

5 (5) Adopt, modify, and enforce all rules and orders

6 necessary to carry out this part.

7 []§174C-83[] Registration of [all existing] wells[.] and

8 reports of water use. (a) Any person owning or operating any

9 well in the State shall register the well with the commission.

10 Registration shall be on the forms provided by the commission.

11 The registration report shall include such information as

12 prescribed by the commission, including [the water use]:

13 (1) Water-use permit number; [the location of the wells;

14 the]

15 (2) Location, diameter [of the well; the], and maximum

16 capacity of the well; [the name]

17 (3) Name of [the] well driller who constructed the well;

18 and [the name]

19 (4) Name of [the] pump installation contractor who

20 installed the pump and pumping equipment.

21 (b) The commission may deny the issuance of a water use

22 permit under part IV, until such time as the applicant registers

NO.

1 all wells which the applicant owns or operates.

2 (c) The commission shall adopt rules requiring owners or
 3 operators of wells to measure water usage and file appropriate
 4 reports with the commission.

5 [[§174C-84]] Permits for well construction and pump
 6 installation. (a) No well construction [and no] or installation
 7 of pumps [and] or pumping equipment shall commence without
 8 appropriate permit from the commission. An application for a
 9 permit for well construction shall be required [for all areas of
 10 the State including water management areas] statewide and shall
 11 be made by the well driller who will construct the well. An
 12 application for a permit for installation of a pump and pumping
 13 equipment shall be made by the pump installation contractor who
 14 will install the pump and pumping equipment.

15 (b) Every application shall contain such data prescribed by
 16 the commission, including [the applicant's name; the
 17 applicant's]:

18 (1) Name and address of applicant;

19 (2) Applicant's license number; [the name]

20 (3) Name and address of the person who will control and
 21 operate the well; [in water management areas, the water
 22 use]

NO.

1 (4) Water-use permit number[; the location], if any;

2 (5) Location of the well; [the proposed]

3 (6) Proposed depth and method of well construction; [the
4 size]

5 (7) Size and expected capacity of the well; and [a
6 description]

7 (8) Description of the pump and pumping equipment to be
8 installed.

9 (c) The commission may issue a permit under this part only
10 if the proposed construction complies with all applicable laws,
11 rules, and standards. Before acting on any application, the
12 commission shall [cause the application to be] have it reviewed
13 by the department of health for compliance with [their] the
14 department's rules and standards concerning, among other things,
15 the appropriateness of the well location. Every permit for
16 constructing a well or an exploratory well is deemed subject to
17 the condition that there is no vesting of rights to use the well
18 water, if any; such use requires a separate water-use permit
19 under part IV.

20 (d) Every permit under this part shall direct the well
21 driller and pump installation contractor to file a well
22 completion report, as provided in [section 174C-85.] this part.

NO.

1 The permit shall be prominently displayed at the site of the well
2 at all times until the well construction or the pump and pumping
3 equipment installation is completed.

4 (e) The holder of a permit for well construction, with the
5 approval of the commission, may change the location of the well
6 before construction is completed. An application to change the
7 location shall describe the location, the proposed depth and
8 method of construction, [and] the size and expected capacity of
9 the new well[. It shall also describe], and the manner of
10 sealing or plugging the incomplete and abandoned well. The
11 commission shall cause all such applications to be reviewed by
12 the department of health for compliance with their rules and
13 standards concerning, among other things, the appropriateness of
14 the location of the well. The commission may issue an amended
15 permit if it determines that the proposed new well location will
16 serve the same use as the original well and draw upon the same
17 supply of water and will not be contrary to any applicable law,
18 rule, order, or regulation, and that the incomplete and abandoned
19 well will be sealed or plugged in a manner to prevent waste of
20 water and damage to the water supply and to protect the public
21 from harm.

22 (f) [Any applicant whose application is rejected may obtain

NO.

1 a hearing before the commission by filing within thirty days of
2 the mailing of the notice of rejection a written petition
3 requesting such a hearing. The hearing shall be conducted
4 pursuant to part I.] After public notice and a hearing where
5 required under part I, the commission shall decide whether the
6 proposed well construction or pump installation meets the
7 criteria in this part and in the rules adopted to implement this
8 part. If so, the commission shall issue the permit.

9 [(g) The commission may suspend or revoke a permit, after
10 notice and hearing, on any of the following grounds:

- 11 (1) Material misstatement or misrepresentation in the
12 application for a permit;
13 (2) Failure to comply with the provisions set forth in the
14 permit;
15 (3) Wilful disregard or violation of any provision of this
16 part or any rule adopted pursuant thereto; or
17 (4) Material change of circumstances or conditions existing
18 at the time the permit was issued.

19 [§174C-85[]] Well completion report. Within thirty days
20 after the completion of the well, the well driller and pump
21 installation contractor shall file with the commission a written
22 report containing such information prescribed by the commission,

NO.

1 including, as appropriate: [the depth,]

2 (1) Depth, thickness, and character of the different strata
3 penetrated and the location of water-bearing strata;
4 [the date]

5 (2) Date of completion of the well; [the length,]

6 (3) Length, size, and weight of the casing and a
7 description of the placement of the casing; [the size]

8 (4) Size of the drilled hole;

9 (5) Type of seal where the well is sealed off; [the type of
10 seal; the number]

11 (6) Number of cubic feet per second or gallons per minute
12 of flow from the well; [the pressure]

13 (7) Pressure in pounds per square inch, if a flowing well,
14 and the static water level and water temperature, if a
15 nonflowing well; and [a]

16 (8) A chemical analysis of a water sample drawn from the
17 well.

18 [[§174C-86]] Well construction and pump installation
19 standards. (a) The commission, by rule, shall adopt minimum
20 standards for the construction of wells and the installation of
21 pumps and pumping equipment. The standards shall be such as to .
22 ensure the safe and sanitary maintenance and operation of wells,

NO.

1 the prevention of waste, and the prevention of contamination of
2 the waters. The minimum standards for well construction shall
3 include the criteria for well location and the procedures for
4 grouting, sealing, capping, and plugging wells. They shall also
5 provide for the installation of devices to measure the amount of
6 [ground water] groundwater being withdrawn from the wells. The
7 minimum standards for the installation of pumps and pumping
8 equipment shall include the required equipment characteristics
9 and construction.

10 (b) If any well construction or pump installation standard
11 is violated and as a consequence [ground water] groundwater is
12 wasted or any well is contaminated, the commission, after giving
13 notice of the defect to the owner of the land on which the well
14 is located and giving [such] the owner a reasonable time to
15 correct the defect, may itself correct the defect and charge the
16 [land owner] landowner for the cost of such correction. [Such]
17 The cost constitutes a lien on the land until paid. The lien may
18 be foreclosed in any court of competent jurisdiction, and in
19 [such] the foreclosure suit, the court shall allow the commission
20 reasonable attorney's fees.

21 ~~[[§174C-87]]~~ Abandonment of wells. When a well is
22 abandoned, the owner shall fill and seal the well in a manner

NO.

1 approved by the commission. Before abandonment, the owner shall
2 file a report with the commission [a report showing the owner's
3 name] which shall include:

- 4 (1) Name and address[; the water use] of owner;
- 5 (2) Water-use permit number, if any; [the name]
- 6 (3) Name and address of the well driller who will be
7 employed to perform the work required for abandonment;
8 [the reason]
- 9 (4) Reason for abandonment; [a description]
- 10 (5) Description of the work to be performed to effect the
11 abandonment; and [such]
- 12 (6) Such other information as the [board] commission may
13 require.

14 **PART VIII. STREAM DIVERSION WORKS**

15 [[§174C-91]] Definition. In this part:

16 "Stream diversion works" means any artificial or natural
17 structure emplaced within the stream for the purpose of diverting
18 stream water.

19 [[§174C-92]] Registration of [existing] stream diversion
20 works[.] and reports of water use. (a) Any person owning or
21 operating a stream diversion works [within or outside of a water
22 management area] anywhere in the State shall register [such work]

NO.

1 it with the commission[. Registration shall be] on [the forms] a
2 form provided by the commission. Reporting requirements on the
3 registration forms shall be reasonable.

4 **(b) The commission shall adopt rules requiring owners or**
5 **operators of stream diversion works to measure water usage and**
6 **file appropriate reports with the commission.**

7 **[[]§174C-93[]] Permits for construction or alteration. (a)**

8 No person shall construct or alter a stream diversion works,
9 other than in the course of normal maintenance, without first
10 obtaining a permit from the commission. The commission may
11 impose such reasonable conditions as are necessary to assure that
12 the construction or alteration of such stream diversion works
13 [will not be inconsistent with the general plan and land use
14 policies of the State and the affected county. Nothing in this
15 section shall be construed to be inconsistent with] are
16 consistent with the Hawaii water plan. A permit issued under
17 this part is subject to the condition that there is no vesting of
18 rights to use the stream water; such use requires a separate
19 water-use permit under part IV.

20 **(b) A person proposing to construct or alter a stream**
21 **diversion work shall apply to the commission for a permit**
22 **authorizing such construction or alteration. The application**

NO.

1 shall contain the following:

2 (1) Name and address of the applicant;

3 (2) Name and address of the owner or owners of the land
4 upon which the works are to be constructed and a legal
5 description of such land;

6 (3) Location of the work;

7 (4) Estimated amount of water to be diverted;

8 [(4)] (5) Engineering drawings showing the detailed plans of
9 construction;

10 [(5)] (6) Detailed specifications of construction;

11 [(6)] (7) Name and address of the person who prepared the
12 plans and specifications for construction;

13 [(7)] (8) Name and address of the person who will construct
14 the proposed work;

15 [(8)] (9) General purpose of the proposed work; and

16 [(9)] (10) Such other information as the commission may
17 require.

18 (c) After public notice and a hearing where required under
19 part I, the commission shall decide whether the proposed
20 construction or alteration meets the criteria in this part and in
21 the rules adopted to implement this part. If so, the commission
22 shall issue the permit.

NO.

1 [[§174C-94]] Completion report. Within thirty days after
2 the completion of construction or alteration of any stream
3 diversion work, the permittee shall file a written statement of
4 completion with the commission. The commission shall designate
5 the form of such statement and such information as it shall
6 require.

7 [[§174C-95]] Abandonment. Any owner of any stream
8 diversion work wishing to abandon or remove such work shall first
9 obtain a permit to do so from the commission.

10 PART IX. NATIVE HAWAIIAN WATER RIGHTS

11 §174C-101 Native Hawaiian water rights. (a) [Provisions
12 of this] This chapter shall not be construed to amend or modify
13 rights or entitlements to water as provided for by the Hawaiian
14 Homes Commission Act, 1920, as amended, and by chapters 167 and
15 168, relating to the Molokai irrigation system. Decisions of the
16 commission [on water resource management] relating to the
17 planning for, regulation, management, and conservation of water
18 resources in the State [shall], to the extent applicable and
19 consistent with other legal requirements and authority, shall
20 incorporate and protect adequate reserves of water for current
21 and foreseeable development and use of Hawaiian home lands as set
22 forth in section 221 of the Hawaiian Homes Commission Act.

NO.

1 (b) No provision of this chapter shall diminish or
2 extinguish trust revenues derived from existing water licenses
3 unless compensation is made.

4 (c) Traditional and customary rights of ahupua'a tenants
5 who are descendants of native Hawaiians who inhabited the
6 Hawaiian Islands prior to 1778 shall not be abridged or denied by
7 this chapter. Such traditional and customary rights [shall]
8 include[, but not be limited to,] the cultivation or propagation
9 of taro on one's own kuleana and the gathering of hihiwai, opae,
10 o'opu, limu, [thatch, ti leaf, aho cord,] and medicinal plants
11 for subsistence, cultural, and religious purposes[.], subject to
12 reasonable conservation practices.

13 (d) The appurtenant water rights of kuleana and taro lands,
14 along with those traditional and customary rights assured in this
15 section, shall not be diminished or extinguished by a failure to
16 apply for or to receive a permit under this chapter."

17 SECTION 3. Section 26-13, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§26-13 Department of health. (a) The department of
20 health shall be headed by a single executive to be known as the
21 director of health.

22 There shall be, within the department of health, an advisory

NO.

1 board to be known as the board of health, which shall advise the
2 director of health on matters within the jurisdiction of the
3 department of health. The board of health shall consist of
4 eleven voting members appointed by the governor as provided in
5 section 26-34 and shall include the director of social services
6 as an ex officio nonvoting member. The appointed members shall
7 include at least one resident of each of the major counties
8 including the county of Kalawao. The appointed members shall
9 serve without compensation but shall be reimbursed for expenses,
10 including travel expenses, necessary for the performance of their
11 duties.

12 The department shall administer programs designed to
13 protect, preserve, care for, and improve the physical and mental
14 health of the people of the State. Without limit to the
15 generality of the foregoing, the programs shall include the
16 administration and enforcement of matters and laws of public
17 health of the State, including the program for Waimano home and
18 for the state hospital, but excluding assistance and care for the
19 indigent and the medically indigent.

20 The department shall implement the mandates of the state
21 water code in accordance with memoranda of understanding entered
22 into with the commission on water resource management pursuant to

NO.

1 section 174C-5(1).

2 **(b)** The functions and authority heretofore exercised by the
3 board of health (excluding assistance and care for the indigent
4 and the medically indigent) and the department of institutions
5 with respect to Waimano home and the state hospital and the
6 dental health treatment function of the department of public
7 instruction as heretofore constituted are transferred to the
8 department of health established by this chapter.

9 The governor shall define and differentiate dental health
10 treatment from dental health instruction and shall provide for
11 the gradual transfer of any personnel within the definition of
12 dental health treatment to the department of health. This
13 section shall not be construed to require the transfer from the
14 department of education to the department of health of any dental
15 hygienist having a teacher's certificate and employed by the
16 department of public instruction immediately prior to
17 November 25, 1959."

18 SECTION 3. Section 26-15, Hawaii Revised Statutes, is
19 amended by amending subsections (a) and (b) to read as follows:

20 "(a) The department of land and natural resources shall be
21 headed by an executive board to be known as the board of land and
22 natural resources[, except for matters relating to the state

NO.

1 water code where the commission on water resource management
2 shall have exclusive jurisdiction and final authority].

3 The board shall consist of six members, one from each land
4 district and two at large. The appointment, tenure, and removal
5 of the members and the filling of vacancies on the board shall be
6 as provided in section 26-34. The governor shall appoint the
7 chairperson of the board from among the members thereof.

8 The board may delegate to the chairperson such duties,
9 powers, and authority, or so much thereof, as may be lawful or
10 proper for the performance of the functions vested in the board.

11 The chairperson of the board shall serve in a full-time
12 capacity. The chairperson, in that capacity, shall perform those
13 duties, and exercise those powers and authority, or so much
14 thereof, as may be delegated by the board.

15 (b) The department shall manage and administer the public
16 lands of the State and minerals thereon and all water and coastal
17 areas of the State except the commercial harbor areas of the
18 State, including the soil conservation function, the forests and
19 forest reserves, aquatic life, wildlife resources, aquaculture
20 programs, state parks, including historic sites, and all
21 activities thereon and therein including, but not limited to,
22 boating, ocean recreation, and coastal areas programs.

NO.

1 The department shall implement the mandates of the state
2 water code in accordance with memoranda of understanding entered
3 into with the commission on water resource management pursuant to
4 section 174C-5(1)."

5 SECTION 4. Section 26-16, Hawaii Revised Statutes, is
6 amended by amending subsection (c) to read as follows:

7 "(c) The department shall promote the conservation,
8 development, and utilization of agricultural resources in the
9 State; assist the farmers of the State and any others engaged in
10 agriculture by research projects, dissemination of information,
11 crop and livestock reporting service, market news service, and
12 any other means of improving the well-being of those engaged in
13 agriculture and increasing the productivity of the lands, and
14 administer the programs of the State relating to animal
15 husbandry, entomology, farm credit, development and promotion of
16 agricultural products and markets, and the establishment and
17 enforcement of the rules on the grading and labeling of
18 agricultural products.

19 The department shall implement the mandates of the state
20 water code in accordance with memoranda of understanding entered
21 into with the commission on water resource management pursuant to
22 section 174C-5(1)."

NO.

1 SECTION 5. Section 26-17, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§26-17 Department of Hawaiian home lands. (a) The
4 department of Hawaiian home lands shall be headed by an executive
5 board to be known as the Hawaiian homes commission.

6 The commission shall be composed of nine members. The
7 appointment, tenure, and removal of the members and the filling
8 of vacancies on the commission shall be in accordance with
9 section 26-34 and section 202(a) of the Hawaiian Homes Commission
10 Act of 1920, as amended. The governor shall appoint the
11 [chairman] chairperson of the commission from among the members
12 thereof.

13 The commission may delegate to the [chairman] chairperson
14 such duties, powers, and authority, or so much thereof as may be
15 lawful or proper, for the performance of the functions vested in
16 the commission.

17 The [chairman] chairperson of the board shall serve in a
18 full time capacity and shall perform such duties, and exercise
19 such powers and authority, or so much thereof as may be delegated
20 to the [chairman] chairperson by the board.

21 (b) The department shall administer the Hawaiian Homes
22 Commission Act of 1920 as set forth in the Constitution of the

NO.

1 State and by law.

2 The department shall implement the mandates of the state
3 water code in accordance with memoranda of understanding entered
4 into with the commission on water resource management pursuant to
5 section 174C-5(1).

6 (c) The functions and authority heretofore exercised by the
7 Hawaiian homes commission as heretofore constituted are
8 transferred to the department of Hawaiian home lands established
9 by this chapter."

10 SECTION 6. Section 46-1.5, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§46-1.5 General powers and limitation of the counties.**
13 Subject to general law, each county shall have the following
14 powers and shall be subject to the following liabilities and
15 limitations:

16 (1) Each county shall have the power to frame and adopt a
17 charter for its own self-government, which shall
18 establish the county executive, administrative, and
19 legislative structure and organization, including, but
20 not limited to, the method of appointment or election
21 of officials, their duties, responsibilities, and
22 compensation, and the terms of their office.

NO.

1 (2) Each county shall have the power to provide for and
2 regulate the marking and lighting of all buildings and
3 other structures that may be obstructions or hazards to
4 aerial navigation, so far as may be necessary or proper
5 for the protection and safeguarding of life, health,
6 and property.

7 (3) Each county shall have the power to enforce all claims
8 on behalf of the county and approve all lawful claims
9 against the county, but shall be prohibited from
10 entering into, granting, or making in any manner any
11 contract, authorization, allowance payment, or
12 liability contrary to the provisions of any county
13 charter or general law.

14 (4) Each county shall have the power to make contracts and
15 to do all things necessary and proper to carry into
16 execution all powers vested in the county or any county
17 officer.

18 (5) [Each] Consistent with the county water use and
19 development plan under section 174C-H(a)(2), each
20 county shall have the power to [maintain]:

21 (A) Maintain channels, whether natural or artificial,
22 including their exits to the ocean, in suitable

NO.

1 condition to carry off storm waters; and to remove
2 from the channels, and from the shores and
3 beaches, any debris that is likely to create an
4 unsanitary condition or become a public nuisance;
5 provided that, to the extent any of the foregoing
6 work is a private responsibility, the
7 responsibility may be enforced by the county in
8 lieu of the work being done at public expense[.
9 Counties also shall have the power to construct,];
10 and

11 (B) Construct, acquire by gift, purchase, or by the
12 exercise of eminent domain, reconstruct, improve,
13 better, extend, and maintain projects or
14 undertakings for the control of and protection
15 against floods and flood waters, including the
16 power to drain and rehabilitate lands already
17 flooded, and to enact zoning ordinances providing
18 that lands deemed subject to seasonable, periodic,
19 or occasional flooding shall not be used for
20 residence or other purposes in a manner as to
21 endanger the health or safety of the occupants
22 thereof, as required by the Federal Flood

NO.

Insurance Act of 1956 (chapter 1025, Public Law 1016).

(6) [Each] Subject to section 174C-4(c), each county shall have the power to exercise the power of condemnation by eminent domain when it is in the public interest to do so.

(7) Each county shall have the power to exercise regulatory powers over business activity as are assigned to them by chapter 445 or other general law.

(8) Each county shall have the power to fix the fees and charges for all official services not otherwise provided for.

(9) Each county shall have the power to provide by ordinance for the improvement or maintenance assessments of districts within the county.

(10) Except as otherwise provided, no county shall have the power to give or loan credit to, or in aid of, any person or corporation, directly or indirectly, except for a public purpose.

(11) Where not within the jurisdiction of the public utilities commission, each county shall have the power to regulate by ordinance the operation of motor vehicle

NO.

1 common carriers transporting passengers within the
2 county and adopt and amend rules the county deems
3 necessary for the public convenience and necessity.

4 (12) Each county shall have the power to enact and enforce
5 ordinances necessary to prevent or summarily remove
6 public nuisances and to compel the clearing or removal
7 of any public nuisance, refuse, and uncultivated
8 undergrowth from streets, sidewalks, public places, and
9 unoccupied lots, and in these connections, to impose
10 and enforce liens upon the property for the cost to the
11 county of removing and completing the necessary work
12 where the owners fail, after reasonable notice, to
13 comply with the ordinances. The authority provided by
14 this paragraph shall not be self-executing, but shall
15 become fully effective within a county only upon the
16 enactment or adoption by the county of appropriate and
17 particular laws, ordinances, or rules defining "public
18 nuisances" with respect to each county's respective
19 circumstances. The counties shall provide the property
20 owner with the opportunity to contest the summary
21 action and to recover the owner's property.

22 (13) Each county shall have the power to enact ordinances

NO.

1 deemed necessary to protect health, life, and property,
2 and to preserve the order and security of the county
3 and its inhabitants on any subject or matter not
4 inconsistent with, or tending to defeat, the intent of
5 any state statute, provided also that the statute does
6 not disclose an express or implied intent that the
7 statute shall be exclusive or uniform throughout the
8 State.

9 (14) Each county shall have the power to make and enforce
10 within the limits of the county all necessary
11 ordinances covering: all local police matters; all
12 matters of sanitation; all matters of inspection of
13 buildings; all matters of condemnation of unsafe
14 structures, plumbing, sewers, dairies, milk, fish, and
15 morgues; all matters of the collection and disposition
16 of rubbish and garbage; and to provide exemptions for
17 homeless facilities and any other program for the
18 homeless authorized by chapter 358D, for all matters
19 under this paragraph; and to appoint county physicians
20 and sanitary and other inspectors as necessary to carry
21 into effect ordinances made under this paragraph, who
22 shall have the same power as given by law to agents of

NO.

1 the department of health, subject only to limitations
2 placed on them by the terms and conditions of their
3 appointments; and to fix a penalty for the violation of
4 any ordinance, which penalty may be a misdemeanor,
5 petty misdemeanor, or violation as defined by general
6 law.

7 (15) Each county shall have the power to provide public
8 pounds, to regulate the impounding of stray animals and
9 fowl, and their disposition, and to provide for the
10 appointment, powers, duties, and fees of animal control
11 officers.

12 (16) Each county shall have the power to purchase and
13 otherwise acquire, lease, and hold real and personal
14 property within the defined boundaries of the county
15 and to dispose of the real and personal property as the
16 interests of the inhabitants of the county may require,
17 except that: any property held for school purposes may
18 not be disposed of without the consent of the
19 superintendent of education; no property bordering the
20 ocean shall be sold or otherwise disposed of; and all
21 proceeds from the sale of park lands shall be expended
22 only for the acquisition of property for park or

NO.

recreational purposes.

(17) Each county shall have the power to provide by charter for the prosecution of all offenses and to prosecute for offenses against the laws of the State under the authority of the attorney general of the State.

(18) Each county shall have the power to make appropriations in amounts deemed appropriate from any moneys in the treasury, for the purpose of community promotion and public celebrations, the entertainment of distinguished persons as may from time to time visit the county, for the entertainment of other distinguished persons as well as public officials when deemed to be in the best interest of the community, and the rendering of civic tribute to individuals who, by virtue of their accomplishments and community service, merit civic commendations, recognition, or remembrance.

(19) [Each] Consistent with the county water use and development plan under section 174C-H(a)(2), each county shall have the power to:

(A) Construct, purchase, take on lease, lease, sublease, or in any other manner acquire, manage, maintain, or dispose of buildings for county

NO.

purposes, sewers, sewer systems, pumping stations, waterworks, including reservoirs, wells, pipelines, and other conduits for distributing water to the public, lighting plants, and apparatus and appliances for lighting streets and public buildings and manage, regulate, and control the same;

(B) Regulate and control the location and quality of all appliances necessary to the furnishing of water, heat, light, power, telephonic, and telegraphic service to the county;

(C) Acquire, regulate, and control any and all appliances for the sprinkling and cleaning of the streets and the public ways and for flushing the sewers; and

(D) Open, close, construct, or maintain county highways or charge toll on county highways; provided that all revenues received from a toll charge shall be used for the construction or maintenance of county highways.

(20) Each county shall have the power to regulate the renting, subletting, and rental conditions of property

NO.

1 for places of abode by ordinance.

2 (21) Unless otherwise provided by law, each county shall
3 have the power to establish by ordinance the order of
4 succession of county officials in the event of a
5 military or civil disaster.

6 (22) Each county shall have the power to sue and be sued in
7 its corporate name.

8 (23) [Each] Consistent with the county water use and
9 development plan under section 174C-H(a)(2), each
10 county shall have the power to establish and maintain
11 waterworks and sewer works; to collect rates for water
12 supplied to consumers and for the use of sewers; to
13 install water meters whenever deemed expedient;
14 provided that owners of premises having vested water
15 rights under existing laws appurtenant to the premises
16 shall not be charged for the installation or use of the
17 water meters on the premises; to take over from the
18 State existing waterworks systems, including water
19 rights, pipelines, and other appurtenances belonging
20 thereto, and sewer systems, and to enlarge, develop,
21 and improve the same.

22 (24) (A) Each county may impose civil fines, in addition to

NO.

1 criminal penalties, for any violation of county
2 ordinances or rules after reasonable notice and
3 requests to correct or cease the violation have
4 been made upon the violator. Any civil fine may
5 be administratively imposed after an opportunity
6 for a hearing under chapter 91. Such a proceeding
7 shall not be a prerequisite for any civil fine or
8 injunctive relief ordered by the circuit court.

9 (B) Each county by ordinance may provide for the
10 addition of any unpaid civil fines, ordered by any
11 court of competent jurisdiction, to any taxes,
12 fees, or charges collected by the county. Each
13 county by ordinance may also provide for the
14 addition of any unpaid administratively imposed
15 civil fines, which remain due after all judicial
16 review rights under section 91-14 are exhausted,
17 to any taxes, fees, or charges collected by the
18 county. The ordinance shall specify the
19 administrative procedures for the addition of the
20 unpaid civil fines to the taxes, fees, or charges
21 and may require hearings or other proceedings.
22 After the unpaid civil fines are added to the

NO.

1 taxes, fees, or charges as specified by county
2 ordinance, the unpaid civil fines shall be deemed
3 immediately due, owing and delinquent and may be
4 collected in the same manner as the taxes, fees,
5 or charges. The procedure for collection of
6 unpaid civil fines authorized in this paragraph
7 shall be in addition to any other procedures for
8 collection available to the State and county by
9 law or rules of the courts.

10 (25) Any law to the contrary notwithstanding, any county
11 mayor may exempt by executive order donors, provider
12 agencies, homeless facilities, and any other program
13 for the homeless under chapter 358D from real property
14 taxes, water and sewer development fees, rates
15 collected for water supplied to consumers and for use
16 of sewers, and any other county taxes, charges, or
17 fees; provided that any county may enact ordinances to
18 regulate and grant the exemptions granted by this
19 paragraph."

20 SECTION 7. Section 46-11.5, Hawaii Revised Statutes, is
21 amended to read as follows:

22 "[[§46-11.5]] Maintenance of channels, streambeds,

NO.

1 streambanks, and drainageways. Notwithstanding any law to the
2 contrary[,] and consistent with the county water use and
3 development plan under section 174C-H(a)(2), each county shall
4 provide for the maintenance of channels, streambeds, streambanks,
5 and drainageways, whether natural or artificial, including their
6 exits to the ocean, in suitable condition to carry off storm
7 waters; and for the removal from the channels, streambeds,
8 streambanks, and drainageways and from the shores and beaches any
9 debris which is likely to create an unsanitary condition or
10 otherwise become a public nuisance; provided that to the extent
11 any of the foregoing work is a private responsibility the
12 responsibility may be enforced by the county in lieu of the work
13 being done at county expense, and any private entity or person
14 refusing to comply with any final order issued by the county
15 shall be in violation of this chapter and be liable for a civil
16 penalty not to exceed \$500 for each day the violation continues;
17 provided further that it shall be the responsibility of the
18 county to maintain all channels, streambeds, streambanks, and
19 drainageways unless such channels, streambeds, streambanks, and
20 drainageways are privately owned or owned by the State, in which
21 event such channels, streambeds, streambanks, and drainageways
22 shall be maintained by their respective owners."

NO.

1 SECTION 8. Section 46-61, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§46-61 Eminent domain; purposes for taking property.

4 [Each] Subject to section 174C-4(c), each county shall have the
5 [following specific powers: To] Power to take private property
6 for [the]:

7 (1) The purpose of establishing, laying out, extending and
8 widening streets, avenues, boulevards, alleys, and
9 other public highways and roads; [for pumping]

10 (2) Pumping stations, waterworks, reservoirs, wells, jails,
11 police and fire stations, city halls, office and other
12 public buildings, cemeteries, parks, playgrounds and
13 public squares, public off-street parking facilities
14 and accommodations, land from which to obtain earth,
15 gravel, stones, and other material for the construction
16 of roads and other public works and for rights-of-way
17 for drains, sewers, [pipe lines,] pipelines aqueducts,
18 and other conduits for distributing water to the
19 public; [for flood]

20 (3) Flood control; [for reclamation]

21 (4) Reclamation of swamp lands; and [other]

22 (5) Other public uses within the purview of section 101-2

NO.

1 [and also].

2 Each county shall also have the power to take such excess over
3 that needed for such public use or public improvement in cases
4 where small remnants would otherwise be left or where other
5 justifiable cause necessitates the taking to protect and preserve
6 the contemplated improvement or public policy demands, the taking
7 in connection with the improvement, and to sell or lease the
8 excess property with such restrictions as may be dictated by
9 considerations of public policy in order to protect and preserve
10 the improvement; provided that when the excess property is
11 disposed of by any county it shall be first offered to the
12 abutting owners for a reasonable length of time and at a
13 reasonable price and if such owners fail to take the same then it
14 may be sold at public auction."

15 SECTION 9. Section 49-3, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "\$49-3 Additional powers of counties. (a) In addition to
18 the powers which it may now have, any county under this chapter
19 may:

20 (1) Construct, acquire by gift, purchase, or the exercise
21 of the right of eminent domain, subject to section
22 174C-4(c), reconstruct, improve, better, or extend any

NO.

1 undertaking, within or without the county, or partially
2 within or partially without the county, and acquire by
3 gift, purchase, or the exercise of the right of eminent
4 domain, lands or rights in land or water rights in
5 connection therewith or undertake the establishment and
6 administration of a loan program as authorized by the
7 law;

8 (2) Operate and maintain any undertaking and maintain a
9 loan program as authorized by law and furnish the
10 services, facilities, and commodities thereof for its
11 own use and for the use of public and private consumers
12 within or without the territorial boundaries of the
13 county;

14 (3) Issue its revenue bonds to finance in whole or in part
15 the cost of the acquisition, purchase, construction,
16 reconstruction, improvement, betterment, or extension
17 of any undertaking or the establishment and
18 administration of any loan program as authorized by
19 law;

20 (4) Impose, prescribe, and collect rates, rentals, fees,
21 and charges for the use and services of, and the
22 facilities and commodities furnished by, the

NO.

1 undertaking or the use and services of the loan program
2 as authorized by law, as provided in section 49-10; and
3 (5) Pledge to the punctual payment of the revenue bonds and
4 interest thereon or covenant to pay into any special
5 funds from which any revenue bonds may be payable, all
6 or any portion of the revenue of the undertaking or
7 loan program or of any part thereof, or the user taxes
8 derived therefrom, or any combination of both
9 (including improvements, betterments, or extensions
10 thereto thereafter constructed or acquired) sufficient,
11 among other things, to pay the revenue bonds and
12 interest thereon as the same shall become due and
13 create and maintain reasonable reserves therefor.
14 (b) The governing body of the county in determining the
15 cost may include all costs and estimated costs of the issuance of
16 the revenue bonds, all architectural, engineering, inspection,
17 financial, and legal expenses, all costs of establishing or
18 administering a loan program authorized by law, the cost of
19 causing the payment of the principal or interest or both of the
20 revenue bonds to be insured or guaranteed, the initial cost of
21 any support facility obtained as permitted by section 49-8, and
22 interest which it is estimated will accrue on the bonds during

NO.

1 the construction or origination period and for six months
2 thereafter.

3 Subject to the approval of the governing body, a board may
4 exercise all or any part of the powers vested in the county
5 pursuant to this chapter but only with respect to an undertaking
6 or loan program under the jurisdiction of such board. In the
7 event a board shall exercise any of the powers vested in the
8 county pursuant to this chapter, the term governing body as used
9 in this chapter shall be deemed to mean the board, and the term
10 director of finance shall be deemed to mean the chief financial
11 officer of the board."

12 SECTION 10. Section 54-15, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§54-15 Powers and duties of board. [The] Consistent with
15 the county water use and development plan under section
16 174C-H(a)(2), the board of water supply shall manage, control,
17 and operate the waterworks of the county and all property
18 thereof, for the purpose of supplying water to the public in the
19 county, and shall collect, receive, expend, and account for all
20 sums of money derived from the operation thereof and all other
21 [monies] moneys provided for the use or benefit of the waterworks
22 and all property used for or held in connection therewith."

NO.

1 SECTION 11. Section 54-51, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§54-51 Board of water supply.** There shall be a board of
4 water supply of the county of Hawaii, to consist of nine members,
5 of whom eight shall be appointive members and be appointed as
6 hereinafter provided, and of whom the ninth member shall always
7 be the person who for the time being shall be the legal incumbent
8 of the office of the chief engineer of the department of public
9 works of the county. [The] Consistent with the county water use
10 and development plan under section 174C-H(a)(2), the board shall
11 manage, control, and operate the water systems and properties of
12 the county, for the supplying of water to the public within the
13 several districts of the county, and collect, receive, expend,
14 and account for all sums of money derived from the operation
15 thereof, and all other moneys provided for the use or benefit of
16 each or all of the water systems as in this part provided."

17 SECTION 12. Section 101-6, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§101-6 What property may be taken.** Property which may be
20 taken by virtue of this part includes all real estate belonging
21 to any person, together with all structures and improvements
22 thereon, franchises or appurtenances thereunto belonging, water,

NO.

1 water rights, subject to section 174C-4(c), and easements of
2 every nature."

3 SECTION 13. Section 101-41, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§101-41 Special power of eminent domain. [Corporations]
6 Subject to section 174C-4(c), corporations organized to develop,
7 store, convey, distribute, and transmit water for irrigation, and
8 which shall have at least \$50,000 of fully paid in capital
9 represented by cash or by tangible property of a market value
10 equal to the amount at which the property is entered as assets on
11 the books of the company, shall have the right to exercise the
12 power of eminent domain as hereinafter provided."

13 SECTION 14. Section 167-5, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "[[]§167-5[]] Powers. In addition to any other powers
16 granted to the board of agriculture for the purpose of carrying
17 out all of its functions and duties, the board, consistent with
18 chapter 174C (except as provided in section 174C-101 relating to
19 the Molokai irrigation system), including any memoranda of
20 understanding entered into with the commission on water resource
21 management pursuant to section 174C-5(1), shall have the
22 following powers for the purposes of this chapter:

NO.

1 (1) [To] Subject to section 174C-4(c), to acquire by
2 eminent domain, water and water sources either above or
3 underground, watershed, reservoir sites, rights-of-way
4 over lands and property for paths, trails, roads, and
5 landing sites, ditches, tunnels, flumes, reservoirs,
6 and pipelines necessary or proper for the construction
7 and maintenance of water facilities for conveying,
8 distributing, and transmitting water for irrigation and
9 domestic use and for such other purposes as may
10 properly fall within the scope of its activities in
11 creating, managing, controlling, operating, and
12 maintaining irrigation water facilities, any of which
13 purposes shall be held to be for a public use and
14 purpose;

15 (2) To make and execute contracts and other instruments
16 necessary or convenient to the exercise of the powers
17 of the board, including, without prejudice to the
18 generality of the foregoing, contracts and other
19 instruments for the purchase or sale of water and for
20 the purchase or lease of water facilities for
21 irrigation of the area, including but not limited to
22 the production of agricultural products and the land on

NO.

1 which the facilities are situated, and for securing to
2 the owners and occupiers of land already using water in
3 a project a priority right to so much water from those
4 of their sources and facilities which are taken over
5 for the project as is required for the purposes or
6 needs of the land, whether agricultural or
7 nonagricultural in nature, as such purposes or needs
8 exist at the inception of the project or are then
9 contemplated in the immediate future;

10 (3) To make and from time to time amend and repeal bylaws
11 and rules, not inconsistent with this chapter, which
12 upon compliance with chapter 91 shall have the force
13 and effect of law, to carry into effect the powers and
14 purposes of the board;

15 (4) To make surveys for the purposes of determining the
16 engineering and economic feasibility of each project;

17 (5) To conduct or have prepared comprehensive studies of
18 the crops, livestock, and poultry which may be
19 profitably grown or produced within each project and
20 the probable market for such crops, livestock, and
21 poultry;

22 (6) To conduct feasibility studies of the economic

NO.

1 potential of the area;

2 (7) To determine the probable costs and value of providing
3 water for irrigation in any proposed project;

4 (8) To investigate and make surveys of water resources,
5 including the possibility and feasibility of inducing
6 rain by artificial or other means;

7 (9) To define and redefine the boundaries of projects and
8 to consolidate or separate projects, existing or
9 proposed pursuant to this chapter, provided that in the
10 event the redefinition of the boundaries or the
11 consolidation or separation previously effected
12 increased the total amount required to be derived from
13 acreage assessments upon lands within the existing
14 project or projects by more than five per cent or will
15 require an increase in the tolls charged for water
16 supplied to the lands or will reduce the amount of
17 water normally available for distribution to the lands,
18 then the redefinition, consolidation, or separation may
19 be accomplished only after notice has been published
20 and a public hearing held as required for the formation
21 of a project upon the initiative of the board. At the
22 hearing, right to protest and the procedure relative to

NO.

1 protest shall be the same as specified in section
2 167-17 concerning the formation of projects, and the
3 proposed redefinition of boundaries, consolidation, or
4 separation of projects shall not be accomplished if
5 protests, such as would be sufficient to prevent the
6 action if it were the formation of a project, are filed
7 by owners and lessees of land within the existing
8 projects or projects affected thereby.

9 The board is empowered, upon petition of land occupiers as
10 provided by section 167-13, or upon petition of the Hawaiian
11 homes commission or upon its own initiative, to prepare detailed
12 plans for the acquisition or construction of facilities for
13 irrigation or for economic development which in its opinion are
14 economically feasible, to prepare estimates of the probable cost
15 of each, and to prepare estimates of the water tolls and acreage
16 assessments required for the cost of operation and the
17 amortization of the investment of each project, so that the
18 project shall be self-supporting."

19 SECTION 15. Section 168-2, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "[[]§168-2[[]] Powers. In addition to any other powers
22 conferred upon the board of agriculture, the board shall have the

NO.

1 powers hereinafter set forth[.] consistent with chapter 174C
2 (except as provided in section 174C-101 relating to the Molokai
3 irrigation system), including any memoranda of understanding
4 entered into with the commission on water resource management
5 pursuant to section 174C-5(1). The board shall have the power to
6 make preliminary surveys and engineering studies, and to
7 construct irrigation and water utilization projects, designed to
8 serve and supply the owners and occupants of lands, and to
9 manage, control, operate, and maintain the projects in accordance
10 with this chapter. It shall also have the power to contract with
11 domestic water users including the counties. It shall further
12 have the power to contract with the government of the United
13 States or any bureau or agency thereof with regard to the
14 construction or the financing of a system.

15 The board shall have power to fix, charge, and collect
16 reasonable water rates for service from the water system to
17 defray the cost of operation, maintenance and replacements of the
18 system. It shall also have the power to acquire by eminent
19 domain, water and water sources either above or underground
20 watersheds, reservoir sites, rights-of-way over lands and
21 property for paths, trails, roads, and landing sites, ditches,
22 tunnels, flumes, reservoirs, and pipelines necessary or proper

NO.

1 for the construction and maintenance of a system for conveying,
2 distributing, and transmitting water for irrigation and domestic
3 use and for such other purposes as may properly fall within the
4 scope of its activities in creating, managing, controlling,
5 operating, and maintaining an irrigation and water utilization
6 system. The power of eminent domain shall be exercised in the
7 manner and under the procedure provided by law."

8 SECTION 16. Section 168-7, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "[[]§168-7[[]] Construction, when. No actual construction
11 of the physical features of a project shall be undertaken unless:

12 (1) [lands] Lands or interests in lands deemed by the board
13 of agriculture to be necessary for the construction and
14 operation of the major features of the project works
15 have been secured, or negotiations therefor have been
16 initiated and it is indicated that the lands or
17 interests in lands can be secured, at prices
18 satisfactory to the board; and

19 (2) Consistent with chapter 174C, including any memoranda
20 of understanding entered into with the commission on
21 water resource management pursuant to section
22 174C-5(1), the board has found:

NO.

1 (A) [that] That water rights adequate for the purposes
2 of the project have been acquired with titles and
3 at prices satisfactory to the board or have been
4 initiated and can be perfected in conformity with
5 the law of the State and in a manner satisfactory
6 to the board[,]; and

7 (B) [that] That the water rights can be utilized for
8 the purposes of the projects in a manner
9 satisfactory to the board."

10 SECTION 17. Section 171-3, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§171-3 Department of land and natural resources. (a) The
13 department of land and natural resources shall be headed by an
14 executive board to be known as the board of land and natural
15 resources.

16 [The] (b) Except as otherwise provided in chapter 174C and
17 in accordance with memoranda of understanding entered into with
18 the commission on water resource management pursuant to section
19 174C-5(1), the department shall manage, administer, and exercise
20 control over public lands, [the water resources,] ocean waters,
21 navigable streams, coastal areas (excluding commercial harbor
22 areas), and minerals and all other interests therein and exercise

NO.

1 such powers of disposition thereof as may be authorized by law.
2 The department shall also manage and administer the state parks,
3 historical sites, forests, forest reserves, aquatic life and
4 aquaculture programs, aquatic life sanctuaries, public fishing
5 areas, boating, ocean recreation, and coastal programs, wildlife,
6 wildlife sanctuaries, game management areas, public hunting
7 areas, natural area reserves, and other functions assigned by
8 law."

9 SECTION 18. Section 171-30, Hawaii Revised Statutes, is
10 amended by amending subsection (d) to read as follows:

11 "(d) Property which may be acquired under this section
12 includes [all];

13 (1) All real property together with all structures and
14 improvements thereon[, franchises];

15 (2) Franchises or appurtenances thereunto belonging[,
16 water,];

17 (3) Water and water rights[, easements], except as
18 otherwise provided in chapter 174C and in accordance
19 with memoranda of understanding entered into with the
20 commission on water resource management pursuant to
21 section 174C-5(1); and

22 (4) Easements and interests in land of every nature."

NO.

1 SECTION 19. Section 171-58, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§171-58 Minerals and water rights. (a) Except as
4 provided in this section the right to any mineral or surface or
5 [ground water] groundwater shall not be included in any lease,
6 agreement, or sale, this right being reserved to the State;
7 provided that the board may make provisions in the lease,
8 agreement, or sale, for the payment of just compensation to the
9 surface owner for improvements taken as a condition precedent to
10 the exercise by the State of any reserved rights to enter, sever,
11 and remove minerals or to capture, divert, or impound water.

12 (b) Disposition of mineral rights shall be in accordance
13 with the laws relating to the disposition of mineral rights
14 enacted or hereafter enacted by the legislature.

15 (c) Disposition of water rights may be made by lease at
16 public auction as provided in this chapter or by permit for
17 temporary use on a month-to-month basis under those conditions
18 which will best serve the interests of the State and subject to a
19 maximum term of one year and other restrictions under the law;
20 provided that any disposition by lease shall be subject to
21 disapproval by the legislature by two-thirds vote of either the
22 senate or the house of representatives or by majority vote of

NO.

1 both in any regular or special session next following the date of
2 disposition; provided further that after a certain land or water
3 use has been authorized by the board subsequent to public
4 hearings and conservation district use application and
5 environmental impact statement approvals, water used in
6 nonpolluting ways, for nonconsumptive purposes because it is
7 returned to the same stream or other body of water from which it
8 was drawn, essentially not affecting the volume and quality of
9 water or biota in the stream or other body of water, may also be
10 leased by the board with the prior approval of the governor and
11 the prior authorization of the legislature by concurrent
12 resolution.

13 (d) Any lease of water rights shall contain a covenant on
14 the part of the lessee that the lessee shall provide from waters
15 leased from the State under the lease or from any water sources
16 privately owned by the lessee to any farmer or rancher engaged in
17 irrigated pasture operations, crop farming, pen feeding
18 operations, or raising of grain and forage crops, or for those
19 public uses and purposes as may be determined by the board, at
20 the same rental price paid under the lease, plus the
21 proportionate actual costs, as determined by the board, to make
22 these waters available, so much of the waters as are determined

NO.

1 by the board to be surplus to the lessee's needs and for that
2 minimum period as the board shall accordingly determine; provided
3 that in lieu of payment for those waters as the State may take
4 for public uses and purposes the board may elect to reduce the
5 rental price under the lease of water rights in proportion to the
6 value of the waters and the proportionate actual costs of making
7 the waters available. Subject to the applicable provisions of
8 section 171-37(3), the board, at any time during the term of the
9 lease of water rights, may withdraw from waters leased from the
10 State and from sources privately owned by the lessee so much
11 water as it may deem necessary to (1) preserve human life and (2)
12 preserve animal life, in that order of priority; and that from
13 waters leased from the State the board, at any time during the
14 term of the lease of water rights, may also withdraw so much
15 water as it may deem necessary to preserve crops; provided that
16 payment for the waters shall be made in the same manner as
17 provided in this section.

18 (e) Any new lease of water rights shall contain a covenant
19 that requires the lessee and the department of land and natural
20 resources to jointly develop and implement a watershed management
21 plan. The board shall not approve any new lease of water rights
22 without the foregoing covenant or a watershed management plan.

NO.

1 The board shall prescribe the minimum content of a watershed
2 management plan; provided that the watershed management plan
3 shall require the prevention of the degradation of surface water
4 and [ground water] groundwater quality to the extent that
5 degradation can be avoided using reasonable management practices.

6 (f) Upon renewal, any lease of water rights shall contain a
7 covenant that requires the lessee and the department of land and
8 natural resources to jointly develop and implement a watershed
9 management plan. The board shall not renew any lease of water
10 rights without the foregoing covenant or a watershed management
11 plan. The board shall prescribe the minimum content of a
12 watershed management plan; provided that the watershed management
13 plan shall require the prevention of the degradation of surface
14 water and [ground water] groundwater quality to the extent that
15 degradation can be avoided using reasonable management practices.

16 (g) The department of land and natural resources shall
17 notify the department of Hawaiian home lands of its intent to
18 execute any new lease, or to renew any existing lease of water
19 rights. After consultation with affected beneficiaries, these
20 departments shall jointly develop a reservation of water rights
21 sufficient to support current and future homestead needs. Any
22 lease of water rights or renewal shall be subject to the rights

NO.

1 of the department of Hawaiian home lands as provided by section
2 221 of the Hawaiian Homes Commission Act.

3 (h) Disposition of water rights in this section shall be
4 consistent with chapter 174C and in accordance with memoranda of
5 understanding entered into with the commission on water resource
6 management pursuant to section 174C-5(1)."

7 SECTION 20. Section 174-5, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§174-5 Powers. (a) In addition to all the powers granted
10 to the board of land and natural resources in chapter 171 for the
11 purpose of carrying out all of its functions and duties, the
12 board shall have the following powers for the purposes of this
13 chapter:

14 (1) To acquire by eminent domain, subject to section
15 174C-4(c), water and water sources either above or
16 underground, watershed, reservoir sites, rights-of-way
17 over lands and property for paths, trails, roads, and
18 landing sites, ditches, tunnels, flumes, reservoirs,
19 and pipelines necessary or proper for the construction
20 and maintenance of water facilities for conveying,
21 distributing, and transmitting water for domestic use
22 and for such other purposes as may properly fall within

NO.

the scope of its activities in creating, managing, controlling, operating, and maintaining water facilities, any of which purposes shall be held to be for a public use and purpose;

(2) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the board, including, without prejudice to the generality of the foregoing, contracts and other instruments for the purchase or sale of water and for the purchase or lease of water facilities for the overall economic development of the area, including but not limited to the land on which the facilities are situated, and for securing to the owners and occupiers of land already using water in a project a priority right to so much water from those of their sources and facilities which are taken over for the project as is required for the purposes or needs of the land, as such purposes or needs exist at the inception of the project or are then contemplated in the immediate future;

(3) To make and from time to time amend and repeal bylaws and rules not inconsistent with this chapter, which upon compliance with chapter 91 shall have the force

NO.

- 1 and effect of law, to carry into effect the powers and
2 purposes of the board;
- 3 (4) To make surveys for the purpose of determining the
4 engineering and economic feasibility of each project;
- 5 (5) To conduct feasibility studies of the economic
6 potential of the area;
- 7 (6) To determine the probable costs and value of providing
8 water for economic development in any proposed project;
- 9 (7) To investigate and make surveys of water resources,
10 including the possibility and feasibility of inducing
11 rain by artificial or other means;
- 12 (8) To define and redefine the boundaries of projects and
13 to consolidate or separate projects, existing or
14 proposed pursuant to this chapter, provided that in the
15 event the redefinition of the boundaries of or the
16 consolidation or separation previously effected
17 increases the total amount required to be derived from
18 acreage assessments upon lands within the existing
19 project or projects by more than five per cent or will
20 require an increase in the tolls charged for water
21 supplied to the lands or will reduce the amount of
22 water normally available for distribution to the lands,

NO.

1 then the redefinition, consolidation, or separation may
2 be accomplished only after notice has been published
3 and a public hearing held as required for the formation
4 of a project upon the initiative of the board.

5 At the hearing, right to protest and the procedure relative
6 to protest shall be the same as specified in section 174-17
7 concerning the formation of projects, and the proposed
8 redefinition of boundaries, consolidation, or separation of
9 projects shall not be accomplished if protests, such as would be
10 sufficient to prevent the action if it were the formation of a
11 project, are filed by owners and lessees of land within the
12 existing project or projects affected thereby.

13 (b) The board is empowered, upon petition of land occupiers
14 as provided by section 174-13, or upon petition of the Hawaiian
15 homes commission or upon its own initiative, to prepare detailed
16 plans for the acquisition or construction of facilities for
17 economic development which in its opinion are economically
18 feasible, to prepare estimates of the probable cost of each, and
19 to prepare estimates of the water tolls and acreage assessments
20 required for the cost of operation and the amortization of the
21 investment of each project, so that the project shall be
22 self-supporting.

NO.

1 (c) The powers of the board in fulfilling the purposes of
2 this chapter shall be in accordance with chapter 174C and
3 memoranda of understanding entered into between the department of
4 land and natural resources and the commission on water resource
5 management pursuant to section 174C-5(1)."

6 SECTION 21. Section 179-3, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) The board of land and natural resources[, whose
9 functions include under the existing laws of Hawaii, the
10 management and administration of water resources of the State,]
11 is hereby designated as the state agency responsible for the
12 accomplishment of the purposes of this chapter."

13 SECTION 22. Section 226-11, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

15 "(b) To achieve the land-based, shoreline, and marine
16 resources objectives, it shall be the policy of this State to:

17 (1) Exercise an overall conservation ethic in the use of
18 Hawaii's natural resources.

19 (2) Ensure compatibility between land-based and water-based
20 activities and natural resources and ecological
21 systems.

22 (3) Take into account the physical attributes of areas when

NO.

- 1 planning and designing activities and facilities.
- 2 (4) Manage natural resources and environs to encourage
- 3 their beneficial and multiple use without generating
- 4 costly or irreparable environmental damage.
- 5 (5) Consider multiple uses in watershed areas, provided
- 6 [such] that these uses do not detrimentally affect
- 7 water quality and recharge functions[.] and are
- 8 otherwise consistent with the state water code, chapter
- 9 174C.
- 10 (6) Encourage the protection of rare or endangered plant
- 11 and animal species and habitats native to Hawaii.
- 12 (7) Provide public incentives that encourage private
- 13 actions to protect significant natural resources from
- 14 degradation or unnecessary depletion.
- 15 (8) Pursue compatible relationships among activities,
- 16 facilities, and natural resources.
- 17 (9) Promote increased accessibility and prudent use of
- 18 inland and shoreline areas for public recreational,
- 19 educational, and scientific purposes."

20 SECTION 23. Section 226-13, Hawaii Revised Statutes, is
21 amended to read as follows:

22 "§226-13 Objectives and policies for the physical

NO.

1 environment--land, air, and water quality. (a) Planning for the
2 State's physical environment with regard to land, air, and water
3 quality shall be directed towards achievement of the following
4 objectives:

5 (1) Maintenance and pursuit of improved quality in Hawaii's
6 land, air, and water resources[.] consistent with the
7 state water code, chapter 174C.

8 (2) Greater public awareness and appreciation of Hawaii's
9 environmental resources.

10 (b) To achieve the land, air, and water quality objectives,
11 it shall be the policy of this State to:

12 (1) Foster educational activities that promote a better
13 understanding of Hawaii's limited environmental
14 resources.

15 (2) Promote the proper management of Hawaii's land and
16 water resources.

17 (3) Promote effective measures to achieve desired quality
18 in Hawaii's surface, ground, and coastal waters[.]
19 consistent with the state water code, chapter 174C.

20 (4) Encourage actions to maintain or improve aural and air
21 quality levels to enhance the health and well-being of
22 Hawaii's people.

NO.

(5) Reduce the threat to life and property from erosion, flooding, tsunamis, hurricanes, earthquakes, volcanic eruptions, and other natural or [man-induced] artificially induced hazards and disasters.

(6) Encourage design and construction practices that enhance the physical qualities of Hawaii's communities.

(7) Encourage urban developments in close proximity to existing services and facilities.

(8) Foster recognition of the importance and value of the land, air, and water resources to Hawaii's people, their cultures and visitors."

SECTION 24. Section 226-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Planning for the State's facility systems with regard to water shall be [directed]:

(1) Consistent with the state water code, chapter 174C, including but not limited to the planning goals specified in section 174C-F; and

(2) Directed towards achievement of the objective of the provision of water to adequately accommodate domestic, agricultural, commercial, industrial, recreational, and other needs within resource capacities."

NO.

1 SECTION 25. Section 664-32, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§664-32 Jurisdiction. [The] Except as otherwise provided
4 in section 174C-12, the circuit courts shall have jurisdiction to
5 hear and determine, without the intervention of a jury, all
6 controversies respecting rights of private way and water rights,
7 as in this part provided."

8 SECTION 26. Section 664-33, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§664-33 Procedure; notice. [The] Except as otherwise
11 provided in section 174C-12, the circuit courts shall hear and
12 determine all controversies respecting rights of private way and
13 water rights, between private individuals; or between private
14 individuals and the State. Any person interested, or the State,
15 may apply for the settlement of any rights involved hereunder by
16 filing a complaint in the circuit court of the circuit in which
17 the property affected is situated. Thereupon the court shall
18 issue a summons to each [land owner] landowner or occupant having
19 an interest in the controversy. A notice of the pending action
20 may be published in any case in the discretion of the court."

21 SECTION 27. All rights, powers, functions, and duties of
22 the department of land and natural resources with respect to the

NO.

1 commission on water resource management are transferred to the
2 commission on water resource management.

3 All officers and employees whose functions are transferred
4 by this Act shall be transferred with their functions and shall
5 continue to perform their regular duties upon their transfer,
6 subject to the state personnel laws and this Act.

7 No officer or employee of the State transferred pursuant to
8 this section shall suffer any loss of salary, seniority, prior
9 service credit, vacation, sick leave, or other employee benefit
10 or privilege as a consequence of this Act.

11 In the event that an office or position held by an officer
12 or employee having tenure is abolished, the officer or employee
13 shall not thereby be separated from public employment, but shall
14 remain in the employment of the State with the same pay and
15 classification and shall be transferred to some other office or
16 position for which the officer or employee is eligible under the
17 personnel laws of the State as determined by the head of the
18 department or the governor.

19 SECTION 28. All appropriations, records, equipment,
20 machines, files, supplies, contracts, books, papers, documents,
21 maps, and other personal property heretofore made, used,
22 acquired, or held by the department of land and natural resources

NO.

1 with respect to the commission on water resource management,
2 relating to the functions transferred to the commission on water
3 resource management, shall be transferred with the functions to
4 which they relate.

5 SECTION 29. There is established within the legislative
6 reference bureau for administrative purposes a review commission
7 on the state water code consisting of nine members appointed by
8 the president of the senate and the speaker of the house of
9 representatives. The review commission shall be directly
10 accountable to the legislature. The review commission shall
11 perform a comprehensive review of the state water code and
12 develop recommendations for its improvement. The review shall
13 include, but not be limited to, the following: (1) the
14 integration of water quality and water quantity matters for a
15 unified management of the resource by a single lead agency as
16 provided for under Article XI, section 7 of the State
17 Constitution; (2) the role of reclaimed wastewater and
18 desalination in implementing a system of total water management;
19 and (3) progress in establishing instream flow standards and
20 their effectiveness.

21 The review commission shall begin its review work ten years
22 after the effective date of this Act and shall complete its work

NO.

1 within a period of two years, culminating in a report of its
2 findings and recommendations to the legislature. The review
3 commission shall cease to exist one year after the submittal of
4 the report.

5 SECTION 30. It is the intent of this Act not to jeopardize
6 the receipt of any federal aid nor to impair the obligation of
7 the State or any agency thereof to the holders of any bond issued
8 by the State or by any such agency, and to the extent, and only
9 to the extent, necessary to effectuate this intent, the governor
10 may modify the strict provisions of this Act, but shall promptly
11 report any such modification with reasons therefor to the
12 legislature at its next session thereafter for review by the
13 legislature.

14 SECTION 31. Any new or increased penalties imposed by this
15 Act shall not apply to violations occurring before the effective
16 date of this Act.

17 SECTION 32. If any provision of this Act, or the
18 application thereof to any person or circumstance is held
19 invalid, the invalidity does not affect other provisions or
20 applications of the Act which can be given effect without the
21 invalid provision or application, and to this end the provisions
22 of this Act are severable.

NO.

1 SECTION 33. In codifying the new sections and parts added
2 to chapter 174C, Hawaii Revised Statutes, by section 2 of this
3 Act, the revisor of statutes shall substitute appropriate section
4 numbers for letters used in the designation of those new sections
5 and parts.

6 SECTION 34. Except as provided in section 174C-H(d) of
7 section 2 of this Act, no other provision of this Act shall be
8 considered to be a mandate under Article VIII, section 5 of the
9 State Constitution for a political subdivision to undertake new
10 programs or to increase the level of services under existing
11 programs of that political subdivision.

12 SECTION 35. There is appropriated out of the general
13 revenues of the State of Hawaii the following sums, or so much
14 thereof as may be necessary for fiscal year 1995-1996, to assist
15 the counties in implementing this Act:

16	County of Hawaii	\$
17	County of Kauai	\$
18	County of Maui	\$
19	County of Honolulu	\$ _____
20	Total	\$

21 The sum appropriated shall constitute the State's share of the
22 cost of mandated programs under Article VIII, section 5, of the

NO.

1 State Constitution.

2 SECTION 36. There is appropriated out of the general
3 revenues of the State of Hawaii the sum of \$, or so
4 much thereof as may be necessary for fiscal year 1995-1996, for
5 the purposes of this Act. The sum appropriated shall be expended
6 by the commission on water resource management for the purposes
7 of this Act.

8 SECTION 37. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$, or so
10 much thereof as may be necessary for fiscal year 1995-1996, for
11 the purposes of this Act. The sum appropriated shall be expended
12 by the department of agriculture for the purposes of this Act.

13 SECTION 38. There is appropriated out of the general
14 revenues of the State of Hawaii the sum of \$, or so
15 much thereof as may be necessary for fiscal year 1995-1996, for
16 the purposes of this Act. The sum appropriated shall be expended
17 by the department of health for the purposes of this Act.

18 SECTION 39. There is appropriated out of the general
19 revenues of the State of Hawaii the sum of \$, or so
20 much thereof as may be necessary for fiscal year 1995-1996, for
21 the purposes of this Act. The sum appropriated shall be expended
22 by the department of Hawaiian home lands for the purposes of this

NO.

1 Act.

2 SECTION 40. Statutory material to be repealed is bracketed.

3 New statutory material is underscored.

4 SECTION 41. This Act shall take effect on July 1, 1995.

5

6

INTRODUCED BY: _____

APPENDIX C

MEETING SCHEDULE—1992-1994

1992

November

13 Fri. Regular Meeting #1 — Conducted by the Legislative Reference Bureau

December

14 Mon. Regular Meeting #2 — Briefing by the Dept. of the Attorney General

18 Fri. Executive Meeting

1993

January

13 Wed. Regular Meeting #3

February

5 Fri. Regular Meeting #4 — Briefing by Yukio Naito

12 Fri. Subcommittee on Bylaws Meeting

17 Wed. Regular Meeting #5 — Briefing by the Commission on Water Resource Management (CWRM)

March

2 Tue. Regular Meeting #6 — Briefings by H. William Sewake, Hawaii County Board of Water Supply, and David Craddick, Maui Department of Water Supply

31 Wed. Regular Meeting #7 — Briefing by the CWRM staff on the Hawaii Water Plan

April

7 Wed. Regular Meeting #8 — Briefings by the CWRM staff and William Tam, Deputy Attorney General, on the Water Commission's Administrative Rules

21 Wed. Regular Meeting #9 — Briefings by the Dept. of Hawaiian Home Lands and the Office of Hawaiian Affairs

27 Tue. Legal Research Subcommittee Meeting

28 Wed. Regular Meeting #10 — Briefing by the CWRM

May

3 Tue. Regular Meeting #11 — Briefings by the Office of State Planning and the Dept. of Agriculture

12 Wed. Regular Meeting #12 — Briefing by the CWRM Staff

19 Wed. Legal Research Subcommittee Meeting

19 Wed. Legal Research Subcommittee Meeting

26 Wed. Regular Meeting #13 — Briefings by the U.S. Geological Survey and the U.S. Corps of Engineers

June

23 Wed. Regular Meeting #14 — Briefing by Manabu Tagamori, Division of Water and Land Development, Department of Land and Natural Resources

29 Tue. Legal Research Subcommittee Meeting

30 Wed. Regular Meeting #15

July

7 Wed. Public Informational Meeting — Windward Oahu

8 Thu. Public Informational Meeting — Waianae, Oahu

14 Wed. Public Informational Meeting — Kona, Hawaii

15 Thu. Public Informational Meeting — Hilo, Hawaii

21 Wed. Regular Meeting #16

27 Tue. Public Informational Meeting — Lihue, Kauai

August

3 Tue. Public Informational Meeting — Lanai

5 Thu. Public Informational Meeting — Molokai

11 Wed. Regular Meeting #17 — Briefing by the Stream Protection and
Management Task Force, CWRM

17 Tue. Legal Research Subcommittee Meeting

18 Wed. Public Informational Meeting — Kahalui, Maui

19 Thu. Public Informational Meeting — Hana, Maui

24 Tue. Legal Research Subcommittee Meeting

25 Wed. Public Informational Meeting — Honolulu, Oahu

31 Tue. Legal Research Subcommittee Meeting

September

1 Wed. Regular Meeting #18 — Briefing by the Department of Health (DOH)

8 Wed. Regular Meeting #19 — Briefing by the CWRM

16 Thu. Public Informational Meeting — Nanakuli, Oahu

21 Tue. Legal Research Subcommittee Meeting

22 Wed. Afternoon,
Regular Meeting #20 — Briefing by the Hawaiian Water Rights
Task Force, CWRM
Evening, Public Informational Meeting — Hauula, Oahu

29 Wed. Regular Meeting #21 — Review draft of Interim Report

October

26 Tue. Legal Research Subcommittee Meeting

27 Wed. Regular Meeting #22 — Review draft of Interim Report

November

3 Wed. Regular Meeting #23 — Review draft of Interim Report

10 Wed. Regular Meeting #24 — Briefing by Ray Jay Davis, American Society
of Civil Engineers, Model State Water Code Project

19 Fri. Regular Meeting #25 — Review draft of Interim Report

December

- 8 Wed. Regular Meeting #26 — Review draft of Interim Report
- 15 Wed. Regular Meeting #27 — Review and approve draft of Interim Report
Legal Research Subcommittee Meeting

1994

January

- 12 Wed. Regular Meeting #28
- 26 Wed. Regular Meeting #29 — Workshop on Hawaiian Water Rights

February

- 18 Fri. Regular Meeting #30
- 23 Wed. Public Hearing on Hawaiian Water Rights

March

- 2 Wed. Regular Meeting #31
- 11 Fri. Regular Meeting #32
- 23 Wed. Regular Meeting #33 — Briefings by the U.S. Corps of Engineers, the DOH,
the CWRM, and the County of Honolulu Dept.
of Wastewater Management and Dept. of Public Works
- 30 Wed. Regular Meeting #34

April

- 8 Fri. Regular Meeting #35
- 20 Wed. Regular Meeting #36
- 29-30 Fri.-Sat. Regular Meeting #37

May

- 9 Mon. Regular Meeting #38
- 18 Wed. Regular Meeting #39 — Review draft of proposals to improve the State Water Code
- 25 Wed. Regular Meeting #40 — Approve draft of 82 proposals

June

- 28 Tue. Windward Public Hearing
- 29 Wed. Waianae Public Hearing
- 30 Thu. Lihue Public Hearing

July

- 6 Wed. Hilo Public Hearing
- 7 Thu. Regular Meeting #41 and Kona Public Hearing
- 13 Wed. Lanai Public Hearing
- 14 Thu. Molokai Public Hearing
- 20 Wed. Wailuku Public Hearing
- 21 Thu. Hana Public Hearing
- 27 Wed. Honolulu Public Hearing

August

- 17 Wed. Regular Meeting #42 — Revise 82 proposals
- 24 Wed. Regular Meeting #43 — Revise 82 proposals
- 31 Wed. Regular Meeting #44 — Revise 82 proposals

September

- 7 Wed. Regular Meeting #45 — Revise 82 proposals
- 14 Wed. Regular Meeting #46 — Revise 82 proposals
- 21 Wed. Regular Meeting #47 — Revise 82 proposals
- 23 Fri. Regular Meeting #48 — Revise 82 proposals
- 24 Sat. Revise 82 proposals
- 28 Wed. Revise 82 proposals

October

- 12 Wed. Regular Meeting #49 — Approve draft of Proposed Amendments
to Improve the State Water Code

November

- 30 Wed. Regular Meeting #50 — Review Final Draft

December

- 21 Wed. Regular Meeting #51 — Review Final Draft
- 28 Wed. Regular Meeting #52 — Approve Final Report

APPENDIX D

ACKNOWLEDGMENTS

The Review Commission has endeavored to compile an inclusive list of persons who contributed to its comprehensive review of the State Water Code. It regrets the inadvertent omission of any name.

At the federal level:

Environmental Protection Agency

Jovita Pajarillo

U. S. Army Corps of Engineers

Mike Lee

Department of the Interior

Fish and Wildlife Service

Andy Yuen

U.S. Geological Survey

Bill Meyer, District Chief

Ed Bolke

National Park Service

Owen Williams, Chief, Water Rights Branch

Jeff Hughes

At the state level:

Commission on Water Resource Management (CWRM)

Keith Ahue, Chair

Richard Cox

Guy Fujimura

Robert Girald

Douglas Ing

Robert Nakata

David Nobriga

Staff:

Rae Loui, Deputy Director

Sallie Edmunds

Roy Hardy

Eric Hirano

Sharon Kokubun

George Matsumoto

Lyann Mizuno

Lenore Nakama

Ed Sakoda

Yoshiaki Shiroma

Hawaiian Water Rights Task Force

Michael Chun, Chair

Jackie Erickson

Stream Protection and Management Task Force

Oswald Stender

Department of Health

Peter Sybinski, Director
John Lewin, former Director
Bruce Anderson, Deputy Director
Tom Arizumi
Steve Chang
Barry Ching
June Harrigan
Denis Lau
Dennis Tulang
Bill Wong

Department of Accounting and General Services

James Hisano
Joe Tassill

Department of Agriculture

Yukio Kitagawa, Director
Paul Matsuo
Paul Schwind

Department of the Attorney General

Robert Marks, Attorney General
Lynn Otaguro
James Paige
William Tam
John Wong
Shari Wong

Office of Information Practices

Stella Lee
Michael Little
Lorna Loo

Center for Dispute Resolution

Dee Dee Letts

Department of Education

Public Library System
Bartholomew Kane, State Librarian
Patrick McNally
Public Schools
Hana High and Elementary
Patricia Eason
Heeia Elementary
Ann Mahi
Kaaawa Elementary
Melanie Gibbs
Kealakehe Intermediate
Stanley Oka

Lanai High and Elementary
Ofelia Plunkett
Nanakuli Elementary
Edward Kawamoto

Department of Hawaiian Home Lands

Hoaliku Drake, Chairperson, Hawaiian Homes Commission
Ben Henderson
Charley Ice
Raynard Soon

Department of Land and Natural Resources

Division of Water and Land Development
Manabu Tagomori
Division of Aquatic Resources
William Devick
Skippy Hau
Don Heacock
Division of Land Management
Mason Young

Ethics Commission

Dan Mollway, Executive Director
Robert McClaren

Land Use Commission

Esther Ueda, Executive Officer

Office of Hawaiian Affairs

Board Members:

Clayton Hee, Chair
Abraham Aiona
Kinau Kamalii

Staff:

Dante Carpenter, Administrator
Richard Paglinawan, former Administrator
Scotty Bowman
Linda Delaney
Lynn Lee

Office of State Planning

Norma Wong, former Director
Harold Masumoto, former Director
Scott Derrickson
Mary Lou Kobayashi
Carolyn Stewart
James Yamamoto

University of Hawaii

Yu-Si Fok
James Moncur
Hiroshi Yamauchi

Richardson Law School
Williamson Chang
Jon Van Dyke

At the county level:

City and County of Honolulu
Former Mayor Frank Fasi
Council Chair John Desoto
Former Council Chair Gary Gill
Felix Limtiaco, Director, Department of Wastewater Management
Kenneth Rappolt, former Director
Ed Pier
Robin Foster, former Director, Planning Department
Randolph Hara
Ken Sprague, Director, Department of Public Works
Board of Water Supply
Ernest Lau
Karen Oshiro
Frances Yasuda

County of Hawaii
Mayor Steven Yamashiro
Former Council Chair Kalani Schutte
Maulili Dixon, Executive Assistant to the former Council Chair
Robin Yahiku, County Clerk
William Sewake, Manager, Department of Water Supply

County of Kauai
Former Mayor Joann Yukimura
Councilmember Kaipō Asing
Councilmember Maxine Correa
Jerome Hew, County Clerk
Murl Nielsen, Manager & Chief Engineer, Department of Water
Rona Miura

County of Maui
Mayor Linda Crockett Lingle
David Deleon, Office of the Mayor
Former Council Chair Goro Hokama
Daryl Yamamoto, County Clerk
David Craddick, Director, Department of Water Supply
Ellen Kraftsow
Jerry Ann Wells
Zachary Helm, Mitchell Pauole Community Center

Other organizations and groups:

Alexander & Baldwin / Hawaiian Commercial & Sugar
Meredith Ching
David Morrell

East Maui Irrigation Company

Stephen Cabral

Garrett Hew

Hawaii Farm Bureau

James Nakatani, President

Grant Hamachi

Kenneth Okamura

Alan Takemoto

Hawaii Leeward Planning Conference

Pete L'Orange

Kamehameha Schools / Bishop Estate

Nathan Aipa

Sidney Keliipuleole

Nam Snow

Alika Thompson

Land Use Research Foundation

Dan Davidson, Executive Director

Karen Piltz

Maui Pineapple Company

Richard Cameron

Wayne Carroll

Douglas MacClure

Wesley Nohara

Native Hawaiian Advisory Council

Elizabeth Pa Martin, President

Toni Bissen

Joyce Brown

Don Freeman

Geralyn Hurney

Jean-Guy R. Lachance

Kathy Latham

David Martin

Bill Meheula

David Penn

Ululani Thomas

Native Hawaiian Legal Corporation

Mahealani Kamaau, Executive Director

Carl Christensen

Elizabeth Kamiko

Carleen Ornellas

Nancy Walsh

People's Water Conference

Martha Black

Charley Ice

Waianae Backyard Aquaculture Project
Puanani Burgess
Eric Enos

Individuals:

Ron Albu
Dawne Browne
Ray Jay Davis
James Funaki
Walter Heen
Kalei Kalaikini
Mike Kido
Douglas Lee
Christine Low
Michele Mendez
Susan Elliot Miller
Margo Mortensen
Yukio Naito
George Peabody
Michael Street
Sarah Sykes
Marge Tamaye
Cora Withingham
Marjorie Ziegler

Laureen Brennan
Nell Cammack
Karen Essene
Carolyn Nakagawa
Steve Shrader

Testimony presented at public informational meetings:

Heeia, Oahu

Valerie Mendes
Marjorie Ziegler
Martha Black
David Martin
Bob Black
Moana Lee
Myrone Murakami
Calvin Hoe
Lynn Lee
Mel Kalahiki

Nanakuli, Oahu

Kathy Reynolds
Barbara Campbell
Carlo Narciso
Charles Kaaiai

Marjorie Ziegler
Edward Kawamoto
Jane Ross
David Martin

Hilo, Big Island

Genesis Lee Loy
Pele Hanoa
Margaret McGuire
Bob Herkes
Jeff Melrose
David Penn

Kailua-Kona, Big Island

Hannah Springer
Steve Bowles
Mike Matsukawa
Virginia Isbell
Pete L'Orange
Keola Childs
Steve Hicks
Jojo Tanimoto
Dick Frye
Ruby McDonald
Alfred Andrade

Lihue, Kauai

Gerald McKenna
Bevill Evans
James Torio
Richard Evans
Judith Williams
Gary Mack
Don Heacock
Cheryl Lovell-Obatake
Maxine Correa

Lanai City, Lanai

Ron McComber
Dal Graham
Pat Reilly
Sol Kahooalahala

Kaunakakai, Molokai

Wilma Grambusch
Noelani Joy
Walter Ragsdale
Ray Kaki
Williamson Chang

William Kalipi
David Craddick
David Martin

Wailuku, Maui

David Deleon
Doug MacCluer
Jackie Lee
Wesley Nohara
Philip Jones
Garret Hew
Gael Ito
David Martin
Marc Hodges
David Craddick
Williamson Chang
Sarah Sykes
Don Heinz

Hana, Maui

Stephen Cabral
Marvin Hanchett-Ching
John Blumer-Buell
Byron Cook
Paul Sinenci, Jr.
Elaine Wender

Honolulu, Oahu

Jerry Souza
Sam Callejo
Rick Prahler
Dan Davidson
Meredith Ching
David Martin
Donna Wong
Terry Carroll
Susan Miller
Marjorie Ziegler
David Penn
Carol Wilcox
Richard Paglinawan
Rick Prahler
James Awai
Jack Hitchcock
E. Laurence Gay

Nanakuli, Oahu

Eric Enos
Kathy Reynolds

Shermaih Taea
Hoaliku Drake
Kennard Hicks
Abraham Mahelona
Gigi Cocquio
Barbara Campbell

Hauula, Oahu

Cathleen Mattoon
Creighton Mattoon
Dave Mikonczyk
Jim Anthony
Dawn Wasson
Lynn Lee
Orin Jackson
Lola Mench
Charlie Reppun
Winifred Miller
Harry Wasson
Marjorie Ziegler

Participants in the Workshop on the Implementation of Hawaiian Water Rights, 1/26/94:

Jon M. Van Dyke
Charley Ice
Benjamin Kudo
Owen Williams
Carl C. Christensen
David Penn
David Martin
Catherine Vandemoer
George Cooper
Eugene Dashiell

Testimony Presented at the Public Hearing on the Implementation of Hawaiian Water Rights, 2/23/94:

Hoaliku Drake
Sarah Sykes
Clara Kakalia
Milnor Lum
Stephen Kubota
Frances Viglialmo
Carol Wilcox
Edward Fa
Dawn Wasson
Jim Anthony
George Hudes
Andrew Yanoviak
Abraham Kamakawiwoole
Brenda Valdez

Deldrene Herron
Diana Hoppe
Anita Gouveia
David Martin
David Penn
Puanani Richards
Williamson Chang
Puaala Mahuka

Testimony Presented at Public Hearings:

Kaaawa, Oahu

Jim Anthony
Francis Morgan
Jack L. Richardson
Dan Davidson
Cathleen Mattoon
Creighton Mattoon
Guy Nakamoto
Dawn Wasson
Stephen Kubota

Nanakuli, Oahu

Puanani Burgess
Eric Enos
Chris Hrusa
Kai Wilbur
Pono Adams
Poka Laenui

Lihue, Kauai

Mike Kido
Alan Smith
Randy Rego
Don Heacock
Joseph Manini

Hilo, Hawaii

Robert Herkes
Clara Kakalia
Stephen Bowles
Robert McGraw
Burt Kauhi
William Sewake
Bob Betheas
Bonnie Gadell
Rick Warshauer
Julia Kaupu

Kailua-Kona, Hawaii

Stephen Bowles
Pete L'Orange
Henry Kekai
Michael Matsukawa
Virginia Isbell
Mahealani Pa
Steve Hicks
Alena Kaiokekoa
Lunakanawai Hananio
Keith Kimi
Daniel Kaniho
Jojo Tanimoto

Lanai City, Lanai

Ron McComber
Butch Gima

Kaunakakai, Molokai

Linda Rosehill
Degray Vanderbilt
Gary Patel
Noelani Joy
Sarah Sykes

Wailuku, Maui

David Morrell
Meredith Ching
Ilima Wood
Doug MacCluer
Jackie Lee
Phil Jones
Jerry Watlund
Laura Sakamoto
Kimo Lindsey
Aimoku Pali
Lehua Pali
Glenn Paahana
Kathy Latham
Dave Penn
Liz Martin
David Martin
Toni Bissen
David Morrell
Jim Loomis
Charles Maxwell
Les Kuloloio
Glen Shepherd
Beatrice Kekahuna

Ellen Kraftsow
David Craddick
Gladys Minchew

Hana, Maui

John Blumer-Buell
Marvin Hanchett-Ching
Stephen Cabral

Honolulu, Oahu

James Moncur
Dan Davidson
Paul Matsuo
Kinau Kamalii
Bill Dougherty
Robert McGraw
Cathy Latham
David Penn
David Martin
Liz Martin
Toni Bissen
Bill Meheula
Charley Ice
David Frankel
T. William Brophy
Allen Gammich

Additional Testimonies from Public Hearings:

Bertrand Block
Martha Black
Jojo Tanimoto
Yukio Kitagawa
Karen Eoff
Sarah Sykes
Bert Hatton
Robert McGraw
Michael Matsukawa
Jim Smith
Owen Williams
William Meheula
Kelly Pomeroy
Hoaliku Drake
Elaine Wender
Bruce Anderson
Doug MacCluer
Nathan Aipa
Keith Ahue
Native Hawaiian Advisory Council

Paul Schwind
David Craddick
Paul Matsuo
Karen Essene
Steve Chang
Victor Moreland
Norma Wong
Donald Heacock

Comments Received through the External Review of the Final Draft of Proposed Amendments to the State Water Code

1. Rae Loui, CWRM
2. June Harrigan, Environmental Planning Office, DOH
3. Steve Chang, Solid and Hazardous Waste Branch, DOH
4. Esther Ueda, Land Use Commission
5. Stephen K. Yamashiro, Mayor, County of Hawaii
6. Felix B. Limtiaco, Department of Wastewater Management, City and County of Honolulu
7. Elaine Wender, Maui resident
8. Robert J. McGraw, Hawaii Sugar Planters' Association
9. Susan Elliot Miller, Oahu resident
10. Martha Black, Oahu Resident
11. Jim Anthony, Hawaii-Laieikawai Association
12. Dan Davidson, Land Use Research Foundation
13. Nathan Aipa, Legal Group, Kamehameha Schools/Bishop Estate
14. Warren Watanabe, Hawaii Farm Bureau
15. Richard F. Cameron, Hawaiian Commercial & Sugar Company
16. David Penn, Oahu Resident
17. Alan Takemoto, Hawaii Farm Bureau
18. Kelly Pomeroy, Big Island resident
19. Richard H. Cameron, Maui Land & Pineapple Company
20. Norma Wong, Office of State Planning
21. Yukio Kitagawa, Department of Agriculture
22. Joann Yukimura, Mayor, County of Kauai
23. Pete L'Orange, Hawaii Leeward Planning Conference
24. David Frankel, Sierra Club
25. Sarah Sykes, Molokai resident
26. Owen Williams, National Park Service
27. Clara Kakalia, Ka Lahui Hawaii
28. Charley Ice, Oahu resident
29. Keith Ahue, CWRM
30. Stephen K. Yamashiro, Mayor, County of Hawaii
31. Peter Sybinski, Director, Department of Health

Special thanks to:

The Legislative Reference Bureau and to Samuel B. K. Chang, director; Charles H. Nishimura, assistant director; Shirley Kakuda, secretary and fiscal officer; Carol Nitta, secretary; Mark Rosen, researcher; and the many other individual members of the Bureau staff who generously assisted, supported, and advised the Review Commission and its staff.

